Workers' Comp Reform

Get the Employees Back on the Job

STANDARD RATE PER $100 PAYROLL

AVERAGE DURATION OF DISABILITY

	WI weeks	MN weeks
Temporary total disability cases only	3.8	4.9
Temporary total disability in Permanent partial cases	17.8	25.8

DISTRIBUTION OF LOST TIME CLAIMS PER 10,000 LOST TIME CLAIMS

	WI	MN
Temporary total disability cases	8,802	8,283
Permanent partial disability cases	1,178	1,624
Permanent total disability cases	3	61

WORKERS' COMPENSATION REFORM:

Get The Employees Back on the Job

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INTRODUCTION

This report represents our attempts to study Minnesota's workers' compensation system comprehensively. The report states that while the system works well in 85-90 percent of the cases where injury occurs, it does not work well in 10-15 percent of the cases. These cases are characterized by extensive litigation, prolonged disability for workers, and extensive use of an expensive medical system.

The principal recommendations are to change the incentives in the system to encourage employers to prevent injuries and return injured workers to work quickly; to reward injured workers for going back to work; to control medical costs; and to reduce litigation. Generally speaking, our primary aim is to reduce costs by reducing disability, while preserving fair and adequate benefits for injured workers.

MAJOR IDEAS IN THIS REPORT

The main problem with Minnesota's workers' compensation system is that the incentives in it are either inadequate to promote the system's goals or actually encourage people to do things that are contrary to the goals.

The incentives for employers to prevent accidents and illnesses and hire injured workers are inadequate and unclear. The vast majority of Minnesota employers buy insurance for work place accidents and illnesses. Consequently, insurance companies, not employers, are actually writing out the checks to pay for injuries and illnesses. Employers who insure also typically rely upon insurers to manage claims after employees are injured. Under these conditions the financial incentives to prevent accidents and take workers back to work quickly are indirect and limited.

The incentives for workers are, in some cases, to prolong disability. In some cases workers' compensation benefits replace over 100 percent of what the employee was taking home while working. Workers are also rewarded for enrolling in the most time consuming and expensive form of rehabilitation, namely retraining. Workers are not rewarded for making a conscientious effort to return to work. For example, workers with permanent impairments can collect benefits in lump sum whether they go back to work or not.

Medical providers have practically no financial incentives to control costs. They are guaranteed 100 percent reimbursement for their services regardless of their costs or effectiveness. Moreover, workers have limited incentives to choose efficient providers. They have 100 percent free choice of provider, with no co-payment obligations anywhere.

Incentives to litigate exist for workers, employers and insurers. This is due partly to the uncertainty that abounds in the system; uncertainty about when employers can legally discontinue paying benefits to injured workers, about the authority of the rehabilitation review panel, and about the rating of impairment workers will get from doctors. Under these conditions litigation is likely to occur, especially when large amounts of money are at stake. The problem is compounded by the willingness of doctors to give opinions favorable to people who want to litigate.

There are also a number of legal and administrative problems with the system that prevent it from working in a fair and efficient manner.

Delays in litigation occur due to the need to collect evidence about attorneys' fees and the need to require doctors to appear in court. There are disputes over disability because doctors use different methods for assessing it. Seniority rules sometimes make it difficult to hire injured workers. Employers are required to pay for things they should not have to pay for. Workers with the same injury do not necessarily get the same impairment awards, and workers with the same income loss do not necessarily get awards that reflect the extent of their economic disability.

Benefit levels are not the problem. Minnesota's high costs are primarily a function of prolonged disability.

Minnesota's benefits are, in most cases, comparable to benefits in other states. Minnesota pays more benefits because of other problems in the system that prolong disability. Minnesota workers are out roughly 50 percent longer than Wisconsin workers. Compared to Wisconsin, Minnesota has roughly 20 times as many injured workers who are never expected to return to work. Litigation occurs nearly twice as often in Minnesota as in Wisconsin. Medical costs in Minnesota's workers' compensation system are rising over 20 percent per year.

To make the workers' compensation system work better existing incentives must be changed or new incentives added which will do the following:

- Give employers clear and significant incentives to prevent injuries and illnesses and take injured workers back to work.
- Reward employees for returning to work, not for being disabled.
- Encourage medical cost control while promoting quality medical service.
- Discourage unnecessary litigation, without preventing litigation in cases of unresolvable disputes.

Furthermore, the legal, administrative, and political obstacles to an affordable, effective and fair workers' compensation system must be removed or reduced. Confusion over the law needs to be reduced. The delays in litigation must be reduced. The system must find ways to deal more effectively with back injuries.

Knowledge on the part of employers regarding loss prevention and loss control must be increased. Seniority rules should be altered to make it easier to rehire injured workers. The groups with a stake in the workers' compensation system must try harder to work together to accomplish mutually agreeable solutions. Features in the benefit structure which are unfair to employers or workers should be removed or changed.

Specifically, the Legislature's strategy to change the incentives and improve the system should include:

- A change in the way permanent partial disability benefits are paid that will encourage employers to return workers to work and reward employees for going back to work.

  The change we recommend is to give workers with permanent impairments more money if their employers do not offer them jobs, and less if employers do offer jobs; and to permit employees to collect their awards in lump sum only if they return to work. (See page 39 in report)

- Changes to reduce litigation, including recodifying the law, requiring doctors to use standard methods of diagnosing disability, expanding educational programs for workers, employers, and insurers, and adopting a new way of determining the level of compensation in cases of back injuries. (See pages 40-41 in the report)

- A study of how to add incentives to control health care costs.

  The Legislature can reduce costs partly by making administrative changes in the system. Still, a broader study is needed of how to enable the workers' compensation system to get the benefit of the cost control techniques such as pre-payment plans or use of 'preferred providers', now being tried in health care generally. (See page 40 in the report).

BACKGROUND

Workers' compensation insurance is "no-fault" insurance for employees and employers.

Workers' compensation laws exist in all 50 states and the District of Columbia. The laws explain the rights of workers and the responsibilities of employers in the event that workers are injured or become ill as a result of and in the course of employment.

The provisions contained in the laws can and do vary significantly from one state to another. States differ in terms of the kinds of injuries that are compensable, the amount of benefits employees may receive, the method for paying these benefits, the insurance requirements for employers, and the administrative procedures for state agencies that implement the laws.

The common characteristic of workers' compensation laws is the no-fault approach they incorporate. Prior to 1910 employees who were injured on the job could try to recover damages from their employers by suing and following the common law rules of liability. Under common law, the courts attempt to determine fault. Common law rules are followed today, for example, in product liability cases.

The common law system did not work well for employees trying to recover damages. Armed with effective defenses, employers were often able to avoid liability to workers. The litigation involved long delays, high costs, and uncertainties with regard to recovery for both employers and employees.

Employers also became dissatisfied with the common law system. Increasing industrialization brought increased incidence of job related injuries and stronger pressure to remove the limitations on employees' rights to recover damages. Employers were concerned about expensive defense costs and the possibility of large damage awards.

Starting about 1910 states began adopting 'no-fault' workers' compensation insurance systems. A compromise was struck between workers and employers which stipulated that workers would refrain from suing employers in cases of work place accidents, in exchange for receiving certain, although limited, benefits. Employers agreed to pay (regardless of fault) for workers medical expenses and pay them for a portion of their lost wages, in exchange for predictability of expense.

Today, persons differ somewhat in how they justify this no-fault approach. Some persons believe the no-fault approach is justified because they believe the costs of products ought to reflect the cost of injuries incurred during their production. Other persons justify the approach because they believe it results in less cost to society than the common law system, their assumption being that if everyone contributes to the cost of protecting employees against work place accidents, the burden will be less than if each employer or employee is individually responsible for injuries found to be the result of his fault.

In any case, the compromise incorporating the no-fault approach was intended to benefit workers as well as employers. Benefits were written into statute as were the responsibilities for workers and employers. Certainty, predictability, and affordability were anticipated results. A summary of the purpose of the Minnesota law is found in a 1947 court decision:

> "The purpose of the Minnesota's Workers' Compensation Act was to provide more certain, effective, speedy, and inexpensive relief for injured workmen than was afforded by the common law rules of negligence and measurably to place upon industry the burden of economic loss resulting from death and injuries of workmen engaged in industry."[1]

Today, nearly 100 percent of the employees in Minnesota are covered with workers' compensation insurance. Workers' compensation coverage is not mandatory for employees of railroads (they are covered under a separate federal law), family farm employees, certain casual workers, professional athletes, and certain household workers. Approximately 82,600 employers carry compensation insurance. About 120 employers and approximately 675 political subdivisions self-insure.[2]

Workers' compensation insurance and self-insurance plans typically provide protection against interruption of income, medical and rehabilitation expenses, due to work related injury or illness.

The benefits (See Appendix 1)

There are five types of benefits paid to compensate workers for interruptions in income due to work place illness or injury. The first, called a *temporary total disability* benefit, is paid to workers who have been injured or become ill in the course of employment and cannot work at all but are expected to eventually recover and return to work in some capacity. These workers receive a periodic benefit (intended to coincide with

their pre-injury payday schedule) based upon their wage at the time of injury, throughout their disability.

A second income replacement benefit is paid to workers who have been injured or become ill, but who can still perform part of their duties. They receive periodic payments, usually based upon the difference between what they were making at the time they were partially disabled, and what they are able to earn while working partially disabled. These are called *temporary partial disability* benefits.

A third income replacement benefit, called a *permanent total disability* benefit, is paid to workers who have been permanently and totally disabled due to work place illness or injury and are not expected to return to work. These benefits are generally paid to a worker for the rest of his life, or until he is no longer permanently disabled. The amount is a percentage of his pre-injury wage, subject usually to a maximum dollar amount.

A fourth type of benefit is paid in cases of injuries that are permanent, but are not totally disabling. These are called *permanent partial disability* awards, and are usually of two types: *scheduled,* in which the award is written in statute, and *unscheduled,* in which the size of award must be adjudicated. They are paid in lump sum amounts or periodically.

A fifth type of income replacement benefit is paid to the dependents of an employee who is fatally injured in the course of his or her work. These are called *death* benefits.

In addition to income replacement benefits, all states require employers to pay the full *medical and hospitalization* costs of an injured worker. Finally, *rehabilitation* benefits are provided in more serious cases to assist the injured worker to return to work.

Employers may provide benefits that exceed those required by law, and some employers do. The statute indicates the minimum benefits that must be provided.

The claims

Each year in Minnesota about 50,000 claims of work place injury or illness are filed with the State Department of Labor and Industry, the agency that administers the Minnesota law.[3] Approximately 74 percent of claims are called "medical only". These claims involve less than three days of lost time from a job, and usually only require minor medical attention. No income replacement benefits are paid in such cases. Approximately 26 percent of all claims involve more than three days of lost time from a job.

Among the lost time claims, roughly 80 percent are for temporary total or temporary partial disability only, in which people receive periodic benefits to compensate them for income interruption. About 15 percent of the lost time claims involve permanent partial disability, in which people receive a weekly benefit for lost wages for a certain period of time and then also receive a lump sum award based upon the extent of their permanent partial disability. Among lost time claims, less than one percent involve death or permanent total disability.[4]

TABLE 1

DISTRIBUTION OF CLAIMS AND CLAIM DOLLARS

Type of Benefit	% of Lost Time Claims	% of Claim Dollars
Temporary Total Only	79	15
Permanent Total	.6	24
Permanent Partial (including TT for these cases)	15	41
Death	.3	3
Medical	–	17
Other	5.1	--
TOTAL	100	100

SOURCE: MN Division of Insurance & MN Workers' Compensation Rating Association, 1981

There is a growing debate over whether workers should be compensated for physical impairment as well.

Some persons believe that workers' compensation insurance is intended primarily to protect workers against interruptions in income due to work place accidents or illnesses. These persons say that an employer's obligation and the worker's benefits should be based upon a worker's actual lost wages due to injury or illness. This position has been referred to by some as a "wage loss" approach to workers' compensation.

Other persons believe that in addition to compensating workers for lost wages, employers should be obligated to compensate workers for the fact that they are no longer a "whole person" as a result of the permanent physical impairment. Proponents of the "whole person theory", as this approach is called, say that awards should be made for physical impairment as such, regardless of the impact of this impairment upon earnings.

Most states provide temporary compensation for actual lost wages and then an award for presumed loss of earning capacity, but do not compensate for impairment *per se.*

No state takes a pure wage loss approach to workers' compensation. In a pure wage loss system injured workers would receive a portion of their wages during their period of disability. Then, once they reached maximum medical recovery, they would receive a periodic benefit based upon the difference between their new wages (if any) and the amount they could have expected to earn had they never been injured. As an alternative, most states

pay a temporary income benefit while the worker is disabled, and, once the worker has reached maximum medical recovery, pay an additional permanent partial award to compensate the person for presumed future loss of earnings. (These additional permanent partial awards may be paid periodically, or in a lump sum, but the amount is fixed at the time of maximum medical recovery and does not vary, regardless of a person's actual future earnings.)

This variation on the wage loss approach is called an "earnings capacity approach". The permanent partial award is intended to compensate for presumed future lost earnings, which are assumed to be due to the permanent partial injury. The awards are based upon an evaluation of physical impairment, but the award is not intended to compensate for impairment *per se.* Rather impairment is used as a surrogate for lost earning capacity.

Minnesota law provides continuous compensation for actual wage loss and compensation for impairment.

The Minnesota system paralleled, until 1974, the earning capacity approach followed in most states. In that year, the Minnesota Legislature changed the workers' compensation law to provide that permanent partial awards, that used to pay for future lost earnings, were to be paid for loss of a bodily part, or use of such parts, and were to be considered separate and distinct from benefits which compensate for lost wages. In effect, the Legislature decided that Minnesota employers would pay compensation for impairment *per se,* regardless of the impact of impairment on wage earnings.

Although the permanent partial impairment awards in Minnesota are calculated just as permanent partial awards for future lost earning capacity are calculated in other states, Minnesota has an additional benefit provision for continuous loss of earnings. This is the result of a court interpretation of the law following the 1974 decision by the Legislature. Interpreting the law literally, the court found that Minnesota had no system for compensating a person who experienced a loss of wages on a permanent basis. The law required compensation for temporary wage loss and for impairment, but not for future wage loss (even though the impairment awards continued to be calculated just as they had been when they were intended to compensate for future earnings lost). The Workers' Compensation Court of Appeals in effect eliminated this theoretical gap in the law when it ruled that persons could collect wage loss benefits on a continuing basis, even if they had collected a permanent partial award.[5] Other states provide that temporary total benefits are discontinued once the permanent partial award has been paid. In summary, Minnesota compensates for both wage loss on a continuing basis, and for impairment.

The three hypothetical cases that follow should clarify how the workers' compensation system can work.

The flow chart (Table 2) summarizes the process for workers and employers.

Case 1: A worker cuts his hand

The process begins when a worker incurs an injury. His next step is to report this injury to his employer, and see a doctor or another medical provider to get the kind of immediate care he needs. In this case the worker would probably go to the hospital for stitches or other attention. The worker's supervisor would probably inform the employer of the employee's injury.

Following receipt of the necessary medical attention, the worker would inquire about his workers' compensation rights, and learn about the process for filing a workers' compensation claim. Workers may learn about their rights from friends, supervisors, employers, or an attorney. In the case of a minor injury to a worker's hand, a "medical only" claim would be filed. Most likely the worker would be able to return to work within three days. No claim would be filed for wage loss (temporary total, temporary partial or permanent total). No claim would be filed for permanent physical impairment. No claim would be needed for rehabilitation or death benefits.

The employer's response in this case is likely to be prompt. The employer will report the accident to the insurance company, which will then pay the medical bills of the worker.

Approximately 76 percent of the workers' compensation cases in Minnesota work as this case has been described.

Case 2: A worker loses his hand on the job

This is a more complicated case because of the severity of the injury. As in the first case, the first thing the worker would do would be to obtain the necessary emergency medical attention he needs. The supervisor would inform the employer of the employee's injury.

During the next several weeks, while the employee is recovering and out of work, he would most likely receive a temporary total wage loss benefit. His medical bills would also have been paid. In this case, the worker is eligible for an additional cash benefit associated with the permanent physical impairment he has incurred. As a result, once his condition had stablized he would return to his doctor. The doctor's role is to evaluate the extent of the worker's impairment so that the amount of cash benefit can be calculated.

The employer's role in case two is quite similar to the role in the first case. The employer would hear about the injury and report it to the insurer. The insurer would investigate the claim and undoubtedly pay the benefit for loss of income (the temporary

total benefits) and pay an additional lump sum amount to compensate for the person's permanent physical impairment.

The calculation of the size of the lump sum permanent partial award for impairment is as follows:

> Percentage of loss of hand x the award specified in Minnesota's statute x 66 2/3 of the worker's pre-injury wage (subject to a maximum of the statewide average weekly wage).

For a carpenter who has lost his entire hand and who had been making $500 per week, the benefit in 1982 would be 100 percent x 220 weeks x $290 = $63,800.

Medical and rehabilitation benefits would be whatever the medical provider and rehabilitation professionals charged.

Case 3: A worker injures his back

This kind of injury presents a more complicated case for the workers' compensation system. This is partly due to the fact that back injuries, and other "soft-tissue injuries" are difficult to diagnose and may not become severe aggrevations to an employee immediately upon his injury. Further explanation should clarify how these factors can complicate workers' compensation system.

When a worker injures his back he may return to work for one or two days and then decide that the back injury is so severe that he has to miss work. He will likely report the injury to his supervisor or employer and then seek medical attention.

The doctor or another medical provider in this case has a responsibility to diagnose the extent to which the worker is impaired. The impairment may be temporary or permanent. It may be difficult to tell after a first visit whether the impairment will be permanent or not. Furthermore, the medical provider's final decision may be based heavily upon the comments he receives from the worker regarding the worker's pain.

In this case, the worker may file a claim for temporary total disability (to provide compensation for his lost income during his disability) and for permanent partial impairment benefits (to compensate him for the permanent impairment he feels he has incurred).

In a case like #3 the employer will, upon hearing of the reported claim, inform the insurer and direct the insurer to investigate the claim. The insurer may, in this case, ask the worker to see a physician of the insurer's designation. This is part of the insurer's effort to investigate the claim and verify that disability exists. Let us assume, for example, that the insurer's physician finds no disability with the worker and reports that the worker should be able to return to work immediately. In such a case the insurer and employer may dispute the claim and refuse to pay the benefits.

There are three primary reasons that an insurer might decide to deny part or all of such a claim. He might feel that the injury does not really exist. Alternatively, he might disagree with the extent of impairment that the worker's doctor has reported. A third option might be that the employer or insurer feels that the injury was not work related.

In case three, after the worker has been denied some or all of his claim, he has to make a decision about whether to litigate. He could hire his own attorney or ask the Department of Labor and Industry to provide him with one. Once the worker has filed a petition to litigate, the Department of Labor and Industry will call a "settlement conference" at which an employee of the Department (a settlement judge) and the worker and employer will convene to try to settle the dispute out of court. If the settlement judge feels that the case cannot be settled, or if the employee or employer reject the effort there, the case can be appealed to a "compensation judge" in the Office of the State Hearing Examiner.

The compensation judge will likely make a judgment about the case. If the worker or employer is dissatisfied with this judgment a further appeal can be made to the state Workers' Compensation Court of Appeals. If the case cannot be settled there, an appeal may also be heard by the state Supreme Court. The state Supreme Court might also send the case back to the compensation judge or to the Workers' Compensation Court of Appeals for rehearing.

The way the workers' compensation process works, in practice, depends heavily upon the performance of many people and groups.

Certain and speedy receipt of the benefits and predictable, affordable costs (primary objectives in the workers' compensation system), depend heavily upon the performance and cooperation of the Legislature, insurers, doctors, lawyers, judges, rehabiliation professionals, employers and employees. As the hypothetical cases just described should indicate, all of these groups have important roles to play in the workers' compensation system.

The Legislature

The Legislature establishes the purpose and scope of the workers' compensation law, including establishing when workers are eligible for benefits, the size of those benefits, the methods for paying benefits, and who is responsible for paying them. The Legislature basically sets the rules within which all persons in the system must operate.

The Legislature can contribute to a smooth working system by:

- Clarifying the purpose of the law.
- Keeping the law simple and understandable (eliminating ambiguities that lead to disputes).
- Supporting state agencies adequately.
- Fostering a spirit of cooperation.

The Minnesota Department of Labor and Industry

The Department of Labor and Industry is primarily responsible for implementing the Legislature's law. This involves receiving reports that injuries have occurred and following up to make sure workers are compensated appropriately.

The Department can contribute to a smooth working system by:

- Helping workers and employers understand their rights and responsibilities.
- Enforcing on insurers the time limit for paying benefits to injured workers and enforcing all rules.
- Mediating disputes effectively.
- Administering the rehabilitation part of the workers' compensation system effectively.

Insurers

Private insurers in Minnesota assume many of the responsibilities that are delegated by law to employers. That is to say, when an employer learns that one of his employees has been injured, the employer usually calls the insurance company to process the claim.

Insurers can contribute to a smooth working system by:

- Providing benefits to injured workers promptly.
- Deciding promptly and fairly about whether claims should be challenged or denied.
- Being effective at providing rehabilitation advice.
- Providing advice to employers of work place safety and controlling losses once workers are injured.

Doctors and health care providers

Medical personnel are primarily responsible for providing the care that workers need immediately after they have been injured. Medical providers are also heavily involved in the system in assessing the degree of disability of employees who have been injured. The decisions medical providers make about the degree of disability can strongly influence decisions by insurers, or injured workers. The quality of medical information also has a significant influence on the rehabilitation program provided to injured workers.

Doctors and health care providers can contribute to a smooth working system by:

- Diagnosing impairment promptly and accurately.
- Providing medical data to insurers, attorneys, and others in the system.
- Recommending return to work as soon as it is necessary.
- Considering all aspects of employee conditions, emotional, psychological, physical, and vocational.

Rehabilitation professionals

Rehabilitation professionals became heavily involved in the Minnesota's workers' compensation system starting in 1979, when the Legislature mandated rehabilitation for injured workers. The primary job of qualified rehabilitation consultants (QRCs) is to become familiar with workers employment limitations and assist them in regaining employment. Their activity might involve conducting tests to determine the physical limitations of an injured worker as well as his aptitude for learning new skills. QRCs are also involved in finding new jobs for injured workers.

Rehabilitation professionals can contribute to the smooth working of the system by:

- Becoming involved early, soon after a worker has been injured.
- Working closely with employers, doctors, insurers, and attorneys.
- Developing effective rehabilitation plans that rapidly return workers to gainful employment.

Lawyers

Lawyers are involved in the workers' compensation system representing employees, employers, and insurers. Attorneys representing injured workers generally perform all the procedural duties associated with filing a workers' compensation claim and petition for hearing, if the worker is not satisfied with the way his claim is resolved. Attorneys also argue workers cases in the various judicial forms for workers' compensation. Attorneys can have significant influence over how the workers' compensation process works, by virtue of the fact that they control the information workers have about their cases. Many persons feel that the confusing nature of the workers' compensation system leads workers to hire attorneys to help them negotiate their way.

Attorneys can contribute to smooth working of the system by:

- Providing workers with information about their rights and responsibilities in a clear and understandable fashion.
- Honestly advising workers and employers as to whether they should litigate their claim.
- Encouraging workers to participate in rehabilitation.

Judges

Judges and mediators are involved in workers' compensation at various judicial forums. Lawyers in the Department of Labor and Industry act as mediators between workers and employers who are unable to settle their claim by themselves. As the hypothetical cases described earlier indicated, the various judicial forums are the Hearing Examiner's Office, the Workers' Compensation Court of Appeals, and the state Supreme Court.

The judges can contribute to the smooth working of the system by:

- Resolving litigation rapidly and effectively.
- Fairly and consistently interpreting the Legislature's intent.

Employers

Employers have the statutory responsibility to pay benefits to injured workers. There are a number of other things employers can do, which are not required by statute, but which contribute to the smooth operation of the system.

Employers can contribute to the smooth working of the system by:

- Investing in work place safety and prevention of injuries.
- Having good employee relations to minimize controversy in the system.
- Informing workers of their workers' compensation rights.
- Committing themselves to providing rehabilitation and modifying jobs for injured workers if necessary.
- Directing the loss control system after a person is injured (including insurers, doctors, lawyers, and rehabilitation professionals).

Workers

The worker starts the entire process by filing a workers' compensation claim. He is also one of the two people who can make a decision about whether a claim will be litigated.

Workers can contribute to a smooth working system and their own best interest by:

- Being careful on the job.
- Knowing their workers' compensation rights and how the system works.
- Selecting doctors who are skilled and objective in their diagnoses of impairment, and sensitive to rehabilitation opportunities.
- Participating conscientiously in rehabilitation and returning to work as soon as his physical condition permits.

Today, it costs employers approximately $1 in premiums for every 70 cents that go to workers in the form of benefits.

About $500 million is paid annually by employers for workers' compensation insurance. Most of this money (approximately $420 million) is paid as premiums to insurance companies. The rest are dollars paid directly to workers by employers who self-insure for workers' compensation losses.

As explained to us by the Commissioner of Insurance, once an insurer collects the premium dollar it is invested. Insurers earn about 15 cents on this dollar over the period of time they have it. About 35 cents or 30 percent of the total $1.15 is used by insurers to pay their expenses and to take their profits. About 80 cents of the $1.15 is paid in benefits to workers (16 cents of this goes for medical costs and 64 cents goes to workers and their lawyers).[6]

The Workers' Compensation Insurance Rating Association of Minnesota, the insurance industry data gathering organization, which also assists insurers in proposing insurance rates to the state, has broken down how the benefit dollars that do go to workers are distributed among the different kinds of benefits. Their records, summarized in Table 1, indicate that approximately 27 percent of the benefit dollars are paid for permanent total and death benefits, even though these claims constitute less than one percent of all claims. Approximately 41 percent of all the benefit dollars are paid on cases that involve permanent partial disability. About 15 percent of the dollars spent for benefits involve temporary total only cases, while temporary total cases constitute about 80 percent of all lost time claims. Seventeen percent of the benefit dollars are spent for medical costs, including all of the medical only claims as well as the medical portion of lost time claims.

Major changes have been made in recent years regarding workers' compensation insurance.

Minnesota has had a workers' compensation insurance system since 1913, but perhaps the most fundamental changes in the system have occurred in the last 10 to 15 years. The changes have generally been in the direction of making improvements for workers, but changes have also have been made that are designed to benefit employers. Many of the changes have been the direct or indirect result of studies that have been made by federal or state commissions.

In 1972 President Nixon appointed a study commission to review state workers' compensation systems. The commission found generally that the state systems were woefully inadequate. The commission made 19 'essential' recommendations which were generally aimed at providing universal coverage of all workers and adequate benefits for workers. Although the study did not recommend that the state systems be replaced by federal systems, the implied threat of federal legislation to mandate certain workers' compensation benefits on the states

encouraged most states to respond on their own. Minnesota was among them.

After years without change, benefits were dramatically increased during the 1970s.

The first major change in Minnesota benefits in almost 20 years occurred in 1974, when they were dramatically increased. Through the 1950s there was practically no change in benefit levels for workers. Through the 1960s, however, as inflation started to diminish the adequacy of these benefits, pressure started to grow to increase benefit levels. Both the business community and the labor community supported the changes in 1974.

In 1975 benefit levels were increased again. The business community seemed somewhat concerned about these increases, partly because the cost of insurance generally was going up. Business did not actively oppose the improvements of workers' compensation benefits, however.

Benefit levels were increased again in 1976 and 1977, but by 1977 the issue of workers' compensation costs had become a major one. In that year, as a result, the Legislature established a study commission to investigate why workers' compensation costs were increasing in Minnesota.

Action has been taken to reduce litigation and encourage injured workers to return to work.

The 1977 legislative study commission concluded that the primary reason for the high workers' compensation costs in Minnesota was the relatively high rate of litigation in this state. It found that there was less direct correlation between workers' compensation costs and benefit levels. As a result of the 1977 study commission's report, the 1979 Legislature made many changes in the workers' compensation law that were designed to promote rehabilitation and return to work, and minimize litigation. In total, the commission made 57 recommendations designed to improve the workers' compensation system.

The 1977 study commission had debated whether Minnesota should establish a state compensation fund to compete with private carriers of workers' compensation insurance. The commission did not recommend the establishment of such a fund, but its debate and further discussion led the 1979 Legislature to establish another commission to study whether the state should establish such a fund. Concern was growing among employers that insurers' rates were excessive.

Changes have also been made to promote competition in the insurance business.

In 1981, the Minnesota Legislature made more changes in the workers' compensation system. The most significant changes involved the insurance process. The Commission studying the state fund idea had completed its work and recommended the establishment of a state workers' compensation fund. The Legislature, instead of passing the state fund proposal, decided to promote competition among private insurers by allowing them, starting in 1983, to compete by setting their own premium rates. Today, insurers are able to compete on the basis of service, and to reduce employers' rates below a state mandated level, based on certain factors. The competition is not nearly as great, however, as it will be starting in 1983. The rule making process to define the nature of this competition is now under way. The 1981 Legislature also made changes that were designed to further reduce litigation in the workers' compensation system.

Recently attention has focused on benefit levels and how benefits are calculated.

Despite the action already taken regarding the litigation and insurance aspects of the system, concern persisted about high workers' compensation rates. This lead the 1981 Legislature to commission another study for the source of these high rates. The insurance division was appropriated money to do a study and report to the 1982 Legislature regarding the issue.

The major feature of the 1982 study by the Insurance Division and the legislation that was designed around this study was a change in the way permanent partial awards were to be treated. The study recommended that permanent partial awards for impairment be provided, but that they be secondary in nature to the wage loss benefits that would be considered the primary benefits provided by workers' compensation insurance. Furthermore, permanent partial awards would not be calculated based on pre-injury wages. Rather, persons with equal impairments would receive equal amounts of money.

Additional proposals were made to improve the efficiency of the workers' compensation system by reducing litigation and speeding the process. The changes in benefit structure were significant and controversial, however. Because of the controversy surrounding the proposed changes in benefits the legislation did not become law.

FINDINGS

Workers' compensation is a politically charged topic with great distrust all around.

There is distrust now among much of the leadership in the business and labor communities. Leaders in the labor community believe that business leaders in the state are conducting a carefully orchestrated attack on benefits to injured workers. Allegations have been made that the attack is designed to reduce benefits, but also to gather opposition to candidates recognized as liberals or supporters of labor. Some people feel that those in the business community would like to prolong the debate over workers' compensation rates in order to get as much "political mileage" out of this issue as possible, and are not making a good faith effort to find solutions.

Two main complaints are heard from persons in the business community. Some persons believe that high workers' compensation rates are forcing businesses to leave Minnesota or to close operations here. Secondly, some employers feel that workers' compensation rates are simply too high. They think it is unfair that they should have to pay more in Minnesota than they would in other states.

There is general agreement on what the workers' compensation system is supposed to do.

Persons agree, for example, that the system should work so that all employees feel certain that, if they are injured, they will promptly receive benefits that are adequate to pay their medical and rehabilitation expenses, and restore a fair portion of their lost wages. Few, if any employers, object to providing adequate benefits to workers who are truly disabled.

Persons also agree that the system should have costs that are predictable and affordable for employers. Other objectives are that the benefits to workers be equitable; that the system encourage employers to have safe work places; that the system return employees to work quickly; and that the system be easily understandable by everyone.

Workers' compensation is an issue in Minnesota primarily because the insurance rates here are higher than the rates in other states, particularly neighboring states.

Workers' compensation rates in Minnesota are, on the average, 91 percent higher than the rates in South Dakota, 70 percent higher than the rates in Wisconsin, 38 percent higher than the rates in Iowa and 26 percent higher than the rates in the country generally.

Table 3 compares Minnesota and its neighboring states with the average in the country, in terms of the standard earned premium rates for workers' compensation insurance. The standard earned rate is recognized as the best estimate of what an average employer in the state would pay.

(Table 3 is the first of many places in this report where comparisons are made between Minnesota and her neighboring states. This is done partly because of the major concern of business leaders that the rates in Minnesota are so much higher than the rates just across the border. There is also concern that Minnesota is losing companies to her neighboring states. We have compared Minnesota and Wisconsin repeatedly because the two states are so similar in population and job mix.)

Rates in Minnesota are not as high as rates in some states.

Table 3 indicates that employers in Michigan and Pennsylvania pay, on the average, more for workers' compensation than employers in Minnesota. In a comparison of rates in 43 states (rates being premiums divided by total payroll in each state), Minnesota ranked 12th from the top, with rates 26 percent higher than the countrywide average.

Rates in Minnesota have increased substantially in recent years.

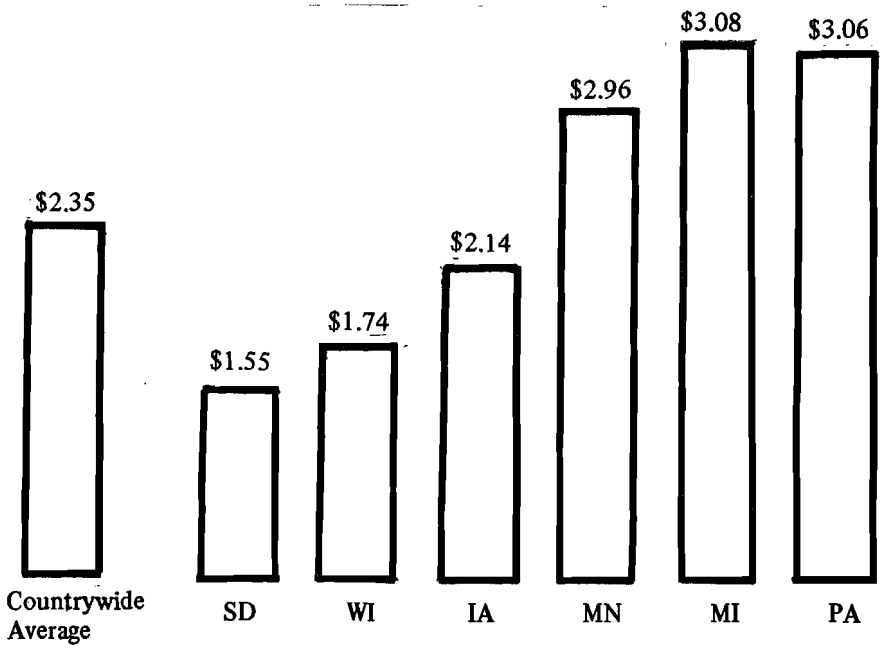
Table 4 indicates that between 1962 and 1978 the average rate for employers in Minnesota went up faster than the rate in all but five of the 28 states for which information is available. Between 1962 and 1978 rates in Minnesota went up 163 percent, whereas rates in South Dakota went up 64 percent and rates in Wisconsin went up 35 percent.

Employers are not all affected equally by workers' compensation rates.

Companies that employ mostly clerical workers are likely to be less concerned about workers' compensation rates than employers of people in more hazardous jobs, because insurance rates vary depending upon the likelihood of injuries occuring. The average rate for insuring employees in the clerical category in Minnesota in 1981 was 21 cents per $100 of payroll, whereas

TABLE 3

WORKERS' COMPENSATION RATE COMPARISION BETWEEN MINNESOTA AND OTHER STATES
(Standard Earned Rate/$100 Payroll)



SOURCE: National Council on Compensation Insurance, September 1, 1982.

the average rate for insuring window cleaners was $111.91 per $100 of payroll.

Large companies, (those that pay more than $750 per year for workers' compensation insurance) can get rate reductions for good safety performance. Large employers also commonly get discounts because of the volume of business they provide insurers. Some insurance companies also pay dividends, which can further reduce workers' compensation costs for employers.

Testimony indicates that relatively small companies, in hazardous industries, competing primarily against similar companies in our neighboring states are the companies most concerned about high workers' compensation rates in Minnesota.

Relatively small companies are more likely than their larger counterparts to be concerned about high rates because the small companies are likely to have fewer 'light-duty' jobs to which they could return injured workers and thereby minimize their workers' compensation liabilities. Companies in hazardous industries are more likely to be concerned than companies in relatively accident-free industries, because rates vary depending upon the likelihood of accidents occurring. Differences in rates between states probably cancel themselves out for companies with plants located in many states, and which compete with similar companies on a national or international basis, provided those companies also have plants in both high and low rate states. These companies are also the ones most likely to be able to have extensive safety programs which minimize work place accidents.

According to the 1980 census, approximately 16.8 percent of the companies in Minnesota are relatively small and involved in hazardous activity.

According to the Census, approximately 16.8 percent of the employers in the state are companies in the mining, forestry, contract construction, or manufacturing industries that employ 100 people or less. Of the approximately 1,500,000 employees in the state in 1980, about 33 percent were engaged in these industries, with employers *of all sizes.*

Besides relatively high workers' compensation rates, we found a relatively high degree of disability here (as measured in terms of the number of people collecting workers' compensation benefits and the length of time they collect benefits).

Table 5 indicates that for every 10,000 lost time cases in each state, Minnesota has almost 20 times as many permanent total disability cases as Wisconsin, and significantly more such cases than South Dakota and Iowa.

Tables 6 and 7 indicate that once persons start collecting dis-

THE CLAIMS PROCESS FOR WORKERS AND EMPLOYERS

WORKER:

Incur injury (60,350 in 1979). → Report injury to employer. → See doctor (s), chiropractor (s), therapists (s). → Seek information about your workers' compensation rights: (from employer, friends, attorneys). →

- File 'med-only' claim. Return to work in three days (74% of injured workers).
- File a claim with employer's insurer, Department of Labor and Industry (26% of worker's injured) for:
  - * Medical bills
  - * Wage loss:
    - . Temporary total
    - . Temporary partial
    - . Permanent total
  - * Physical impairment:
    - . Permanent partial
  - * Rehabilitation
  - * Death

  → Receive benefits that are acceptable. → Recuperate and return to work or collect benefits permanently.

  → Receive benefits that are unacceptable. → Litigate (with Department of Labor and Industry).

  → Be denied benefits (10% of all claims in 1979). → Litigate (with Department of Labor and Industry).

  → Get confused. → Litigate (with Department of Labor and Industry).

EMPLOYER/INSURER:

Buy worker's compensation insurance or self-insure and buy reinsurance. → Inform workers of insurance benefits. → Hear about injured worker. → Inform worker of workers' compensation rights. → Inform insurer and Department of Labor and Industry of injury and claim. → Insurer investigates claim and calculates benefit. →

- Pay medical costs and cash benefits (on a weekly basis until worker dies or returns to work) and possibly a lump sum amount). Initiate rehab when possible.
- Deny claim (file report with Department of Labor and Industry). Prepare to litigate.
- Pay benefits for a while and then discontinue payments. Prepare to litigate.

LITIGATION PROCESS

WORKER:

Hire attorney or ask Department of Labor and Industry for one. → File litigation petition with Department of Labor and Industry. → Meet with Department of Labor and Industry settlement judge and employer. →

- Settle
- Appeal to compensation judge. →
  - Settle
  - Appeal to Workers' Compensation Court of Appeals. →
    - Settle
    - Appeal to state Supreme Court. →
      - Settle
      - Be directed back to compensation judge or Workers' Compensation Court of Appeals.

EMPLOYER/INSURER:

Hire attorney →

TABLE 4

AVERAGE WEEKLY ADJUSTED MANUAL RATES PER $100 OF PAYROLL FOR 45 TYPES OF EMPLOYERS IN 47 JURISDICTIONS, SELECTED YEARS, 1950 TO 1978

Jurisdiction	Year								%
	1950	1954	1958	1962	1965	1972	1975	1978	Change
Alabama	$0.282	$0.310	$0.348	$0.364	$0.437	$0.479	$0.599	$0.855	+134
Alaska	--	--	--	--	--	.832	1.721	1.762	
Arizona	--	--	--	--	--	1.385	2.178	2.505	
Arkansas	--	--	--	--	--	.915	1.038	1.292	
California	--	--	.707	.858	1.183	1.102	1.406	2.135	+148
Colorado	--	--	--	--	--	.649	.654	1.210	
Connecticut	.660	.838	.812	.762	.689	.697	.827	1.353	-77.5
Delaware	--	--	--	--	--	.578	.736	1.428	
Dist. of Col.	--	--	--	--	--	.737	1.404	3.502	
Florida	--	--	--	--	--	--	--	2.641	
Georgia	--	--	--	--	--	.501	.760	1.077	
Hawaii	--	--	--	--	--	.960	1.335	2.057	
Idaho	.519	.664	.581	.582	.667	.865	1.283	1.287	121
Illinois	.437	.497	.514	.609	.624	.657	1.002	1.382	126
Indiana	.358	.363	.410	.398	.430	.385	.417	.480	.20
Iowa	--	--	--	--	--	.451	.662	1.084	
Kansas	--	--	--	--	--	.575	.766	.879	
Kentucky	.390	.369	.394	.448	.558	.668	1.065	1.382	+208
Louisiana	--	--	--	--	--	--	--	1.512	
Maine	.415	.398	.340	.370	.337	.520	.981	1.380	272
Maryland	.501	.600	.661	.747	.854	.816	1.009	1.262	68.9
Massachusetts	--	--	.859	1.034	1.141	1.106	1.171	1.373	32.7
Michigan	.476	.416	.450	.694	.715	.914	1.238	1.890	172
MINNESOTA	--	--	.653	.692	.738	.854	1.240	1.821	163
Mississippi	.638	.727	.758	.988	.980	.751	.902	.902	-.08
Missouri	--	--	--	--	--	--	--	.740	
Montana	.590	.644	.792	.721	.845	.948	1.565	1.404	84.7
Nebraska	.572	.474	.437	.527	.447	.529	.789	.710	34.7
New Hampshire	.528	.586	.531	.495	.560	.534	.746	1.166	13.5
New Jersey	--	--	.911	1.054	1.039	1.224	1.233	1.687	60.0
New Mexico	.463	.858	.838	.863	.945	.787	1.069	1.441	66.9
New York	--	--	--	--	--	.864	.973	1.770	
North Carolina	.392	.512	.473	.492	.474	.420	.433	.532	.08
Ohio	--	--	.627	.813	.820	.885	1.109	1.550	90.6
Oklahoma	--	--	--	--	--	--	1.052	1.446	
Oregon	--	--	.630	1.007	--	1.491	2.074	2.918	189
Pennsylvania	--	--	.355	.396	.386	.387	.776	1.173	196
Rhode Island	.829	.930	.831	.834	.842	.767	.899	1.393	67.0
South Carolina	.658	.607	.567	.690	.696	.609	.590	.836	21.1
South Dakota	.537	.400	.315	.392	.389	.511	.635	.842	64.7
Tennessee	--	--	--	--	--	.664	.710	.903	
Texas	--	--	--	--	--	--	--	1.753	
Utah	.542	.545	.502	.422	.531	.503	.766	.892	11.1
Vermont	.398	.457	.524	.505	.595	.514	.588	.875	73.2
Virginia	--	--	--	--	--	.391	.539	.880	73.2
West Virginia	--	--	.268	.345	.404	.428	.671	.660	91
Wisconsin	--	--	.523	.556	.603	.505	.581	.752	35.2

NOTE: Dashes indicate data not available.
SOURCE: Monthly Labor Review

TABLE 5

DISTRIBUTION OF LOST TIME CASES PER 10,000 LOST TIME CASES

STATE	POLICY PERIODS	PERMANENT TOTAL	PERMANENT PARTIAL	TEMPORARY TOTAL
Illinois	3-1-77–2-25-78 3-1-78–5-31-79	25	3,682	6,262
Indiana	2-1-78–1-31-79 2-1-79–1-31-80	4	1,364	8,599
Iowa	4-1-77–3-31-78 4-1-78–9-30-79	4	1,175	8,775
Michigan	4-1-77–3-31-78 4-1-78–3-31-79	73	2,107	7,777
Minnesota	1-1-77–12-31-77 1-1-78–12-31-78	61	1,624	8,283
South Dakota	11-1-77–10-31-78 11-1-78-10-31-79	28	1,358	8,560
Wisconsin	3-1-78–12-31-78 1-1-79–12-31-79	3	1,178	8,802

SOURCE: National Council on Compensation Insurance, May 1982 (fifth report basis).

ability benefits in Minnesota, they collect benefits longer than do persons in Wisconsin.

The average cost of lost time claims in Minnesota is also relatively high, at least compared to the average cost of claims in Wisconsin. See Table 8

Duration has been found to correlate positively with the cost of some claims.

The Division of Insurance, in its study published in January 1982, documented that the average cost of claims in Minnesota involving temporary total benefits was only $1,350. The comparable cost in Wisconsin was $1,060 (about 27 percent less).[7] The Insurance Division study also points out that the average duration of temporary disability in Minnesota is about 29 percent longer than the average duration of such claims in Wisconsin. The length of average duration may also explain part of the reason why the average cost of permanent partial claims is 51 percent higher in Minnesota than Wisconsin. As Table 8 indicates, the average duration of the temporary total benefits in permanent partial cases is 44.9 percent longer in Minnesota than in Wisconsin.

Just what accounts for the longer duration of income benefits

TABLE 6

AVERAGE DURATION OF TEMPORARY TOTAL DISABILITY

Body Parts	Minnesota (8636 Claims) %	Minnesota Av. Duration in Weeks	Wisconsin (13,074 Claims) %	Wisconsin Av. Duration in Weeks
Head & neck	5	4.7	5	3.2
Arms & hands	27	3.5	34	3.3
Legs & feet	20	4.2	21	3.5
Lower back	29	5.3	25	4.0
Other trunk	11	6.8	10	4.9
Multiple injuries	6	6.2	4	5.5
Disease & cumulative injuries	2	6.8	1	7.2
TOTAL	100	4.9	100	3.8

SOURCE: National Council on Compensation Insurance Data. January 1982

TABLE 7

AVERAGE DURATION IN WEEKS OF INCOME BENEFITS FOR PERMANENT PARTIALS

Body Part	Minnesota	Wisconsin
Head & neck	27.5	19.7
Arms & hands	14.3	13.7
Legs & feet	25.5	18.7
Lower back	32.2	21.8
Other trunk	38.7	24.3
Multiple	31.4	30.5
Disease & cumulative injuries	40.8	13.8
TOTAL	25.8	17.8

SOURCE: National Council on Compensation Insurance Data, January, 1982

TABLE 8

AVERAGE COST PER LOST TIME CLAIM

	Minnesota	Wisconsin
Temporary Total	$1,350	$1,060
Permanent Partial	14,200	9,400

SOURCE: MN Insurance Division, 1982

and the additional difference in the average cost of permanent partial cases, beyond the amount that could be attributable to duration, will be discussed in the next several pages.

Several factors have been suggested to explain the relatively high cost of workers' compensation in Minnesota and the relatively high degree of disability here.

Some people think there is a major problem with too much litigation in Minnesota.

Table 9 indicates that the rate of litigation in Minnesota is approximately twice as high as the rate in Wisconsin.

Most litigation occurs over whether injuries are work related or not, and the extent of the disability. See Table 10

Some people have concluded that litigation contributes to the cost of workers' compensation, and may even explain cost differences between the states.

TABLE 9

COMPARISON OF LITIGATION RATES IN WISCONSIN AND MINNESOTA

Year	(a) Total First Reports Of Injury	(b) Total Requests For Hearing	(b) as % of (a)
	Wisconsin		
1975	68,272	2,580	3.78
1977	81,047	3,076	4.51
1980	73,547	4,161	5.66
1981	66,673	4,094	6.14
	Minnesota		
1975	40,608	3,608	8.88
1977	50,009	4,192	8.38
1980	54,000	5,637	10.44
1981	53,181	5,884	11.06

SOURCE: WI Department of Industry, Labor & Human Relations and MN Department of Labor & Industry, 1982

TABLE 10

ISSUES IN CASES INVOLVING AN ATTORNEY WHICH WENT TO TRIAL

Issue	Minnesota	Wisconsin	All States
Work related	22	24	16
Disability	10	12	10
Multiple reasons	23	20	20
No trial	45	44	54

SOURCE: National Council on Compensation Insurance, 1982

Tables 11 and 12 appeared in a report issued in 1982 by the Minnesota Division of Insurance. The authors of the report concluded that the tables indicate that the "states which are most successful at avoiding controversy are also the states with lower average claim costs." The authors qualified their conclusions by stating that the data they relied upon reflect claims that are only six months old and that controversy will likely increase in that body of claims. "Nonetheless", the authors wrote, "the data provides a very clear suggestion that the amount of controversy in a system has something to do with the ultimate costs of claims and that controversy is expensive."[8]

Nearly everyone agrees that litigation prolongs disability. Disabled people have no incentive to return to work when their case is being litigated. Insurers and employers have no incentive to provide rehabilitation during litigation.

The Director of Rehabilitation for the Minnesota Department of Labor and Industry, Gladys Westberg, told us that there is usually a choice involved between litigation and rehabilitation. Workers litigating their case need evidence that they are disabled. Therefore, they have no incentive to return to work if their case is being litigated. Similarly, insurance companies and employers have no incentive to provide rehabilitation service if the case is being litigated over compensability (whether the injury was work related or not, or whether it even exists).

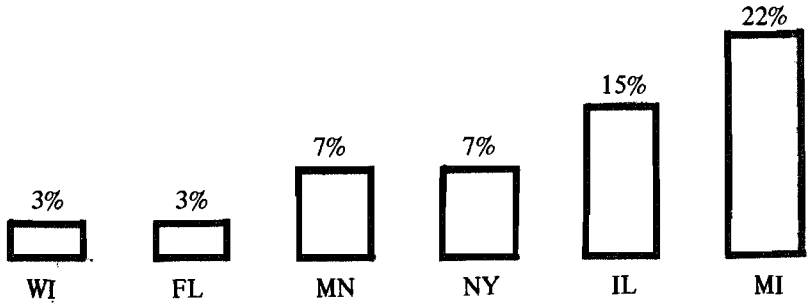
The state requirement that rehabilitation services be provided within 30 days of the employer's knowledge that the employee is unable to return to work reflects that belief that successful rehabilitation depends upon early intervention. Considering the length of time it takes to start the litigation process (usually about 6-13 months) it is likely that litigation all but eliminates the possibility of successful rehabilitation.

At least eight factors have been mentioned as contributing to litigation and its costs.

- **Uncertainty among workers about what will happen to them after they are injured, and among employers and insurers about their responsibilities.**

TABLE 11

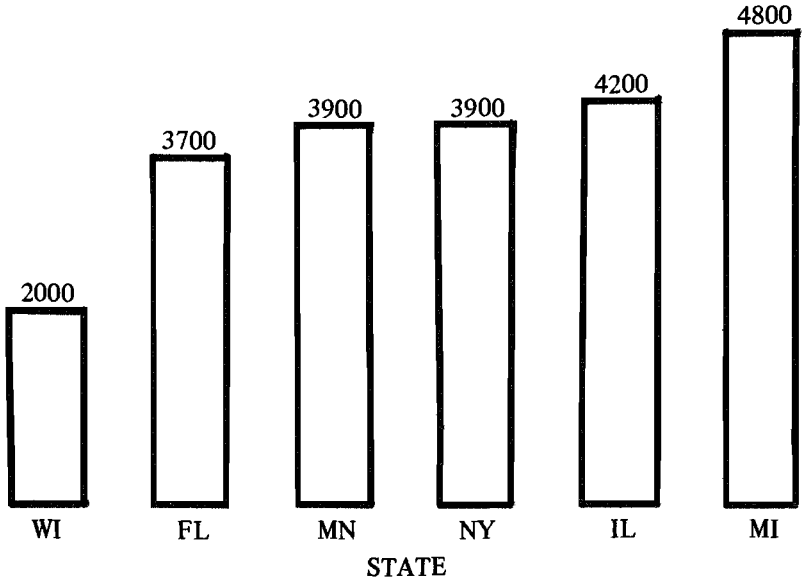
PERCENTAGE OF CLAIMS WHICH ARE CONTESTED
Evaluated Six Months After the Report Date



SOURCE: Workers' Compensation in Minnesota, prepared by Minnesota Insurance Division, January 1982

TABLE 12

AVERAGE CLAIM COST
With Deaths and Permanent Totals Removed



SOURCE: Workers' Compensation in Minnesota, prepared by Minnesota Insurance Division, January 1982

Everyone connected with workers' compensation insurance seem to agree that uncertainty leads to litigation. Perhaps the most definitive study of who litigates and why, conducted by the California Workers' Compensation Institute, confirms this opinion. The Institute found that while there is no single cause for litigation, a central, dominant theme exists: "Uncertainty creates a fertile atmosphere for litigation."[9]

The uncertainty exists partly among workers who do not understand what will happen to them after they are injured. When employees go for days or weeks without hearing from anyone they are said to become worried about their income, family and job security, they become depressed and seek the assistance of an attorney. Conversely, agreement exists that the likelihood of litigation is reduced when employers contact workers immediately after the injury occurs to let employees know the company is concerned about them, will pay benefits to them while they are injured, and will do everything possible to get them back to work.

Uncertainty also exists among employers and insurers about the law and their responsibilities and rights. There are at least three reasons for their uncertainty. First, there is confusion because the law is not specific enough in some areas. This is especially true in new areas of the law. For example, in 1979 the Legislature passed a new law that created a major role for rehabilitation in workers' compensation and established a rehabilitation panel at the state level which would review plans for rehabilitation services. (Eligible workers are required to take rehabilitation services if they are offered.) The law does not, however, clearly explain the authority of the rehabilitation panel to determine eligibility for rehabilitation. The Supreme Court is now hearing a case where this is a central issue. Similarly, the law does not explain whether the panel has the power to award retraining benefits, which are slightly higher than other rehabilitation benefits. Confusion also exists now over when an employer can discontinue paying temporary total income replacement benefits to workers. Prior to 1975 the law was clear. It said that benefits could be discontinued after 35 weeks, unless the injured worker could prove he was permanently and totally disabled. In 1975 the Legislature removed this 'healing period' date, and substituted language to the effect that the employer must continue paying the worker unless the employer offers the employee a job he can do in his partially disabled condition or unless the employee fails to make a 'reasonably diligent effort' to find a job. There is much litigation over what constitutes a 'reasonably diligent effort'.

Because the law does not say enough in some areas, attorneys litigate in order to get clarification. The outcome of this litigation develops into a body of 'case law'. By definition, however, case law is restricted to specific cases. Therefore, if an attorney gets a case he believes is sufficiently different from previously ruled upon cases, he may litigate again to get a new interpretation.

Confusion, uncertainty, and litigation also occur because employers, insurers, and lawyers find inconsistencies between what they believe the statute says, and what case law interpretations say. For example, the statute states fairly clearly that employees must get the permission of the insurer before they can change medical providers at the insurers expense. Defense attorneys report, however, that it is common practice for workers to change providers at will. Case law supports this practice. This upsets insurers. Similarly, the statute states fairly clearly that in cases where a worker has died on the job, the combination of social security and workers' compensation benefits to the dependents, should not exceed the weekly wage of the decedent. It took a 16-page memorandum, however, from the Workers' Compensation Reinsurance Association, to explain how to calculate the issue significantly.

Finally, we heard a number of people complain that the law has been changed so often that they simply cannot keep up with it. In summary, uncertainty exists about workers' compensation law and rights, among employers, employees, and others in the system. The problem seems partly to be that employers don't get to workers to explain the law to them. This may be due to the fact that the statute is complicated, the statute does not say enough about certain things, and case law appears to contradict the statute in the same areas.

- **Lack of a standard method of diagnosing disability.**

Today it is possible for two doctors to examine the same patient and come up with significantly different diagnoses. This can happen, because doctors are not required to use standard methods of examining patients with work-related injuries, nor are they required to use standard ratings of disability when they find certain physical characteristics of impairment.

This problem is compounded by the fact that some doctors appear to be willing to give opinions regarding disability that are favorable to people who want to litigate. We have been told by doctors that this problem is rampant in the Twin Cities. We were told by one doctor that he could get anyone on our committee $10,000 in a permanent partial award.[10] Everyone closely involved in workers' compensation seems to know who the doctors are who will give generous assessments of disability and who the doctors are who will find little or no disability in any person.

Considering the relatively large amounts of money a person with a permanent partial disability can receive, wide dispari-

ties in diagnosis can lead to litigation. Furthermore, considering the uncertainty persons have about the disability rating workers will get from doctors, there is an incentive to 'shop around' looking for the rating that suits your interest. This shopping is reportedly common today.

- **The difficulty in diagnosing back disability.**

Lawyers, judges, and rehabilitation experts report that much of the litigation which occurs involves back injuries. There appear to be several reasons for this. First, approximately 40 percent of all work-related injuries involve the back or other areas of the trunk. More importantly, however, is the difficulty physicians have diagnosing disability to the back. We have been told by doctors that it is sometimes difficult to find objective evidence of back impairment, even when the patient complains of pain. We have also been told that back injuries do not always result in disability immediately after the pain is felt or the injury occurs. It may be several days or weeks before a patient experiences pain that is severe enough to be disabling. Futhermore, doctors say that psychological stress can manifest itself as back pain. An employee may, for example, be having marital, sexual, or other social problems in his life that manifest themselves as back pain. This pain may be disabling and, therefore, compensable under workers' compensation law.

Considering the difficulties associated with diagnosing back disability, and the delays that may occur in reporting back problems, employers and insurers are often suspicious when a worker files a claim for compensation for a back injury. This suspicion is undoubtedly increased by the knowledge that different doctors are likely to come up with different diagnoses.

In summary, it appears to us that much of the controversy reflected in Table 10 involves back injuries and is due partly to shortcomings in the law and methods used to diagnose injuries, and partly to the particularly difficult job of diagnosing back injuries. In some cases the dispute is over 'compensability': is the worker injured at all, or is his injury work related? This dispute usually starts when the employer denies a claim. In other cases the dispute is over 'disability': the degree to which a worker is impaired. These disputes may involve differences of opinion between doctors and may arise because the employer denies a claim or discontinues payment of benefits.

It is important to note that the data on Table 10 include only cases that were controverted with attorney involvement on behalf of the worker. The data does not provide any information about cases that did not involve attorneys, nor does it tell us the issues involved in the roughly 45 percent of the cases involving attorneys which did not go to trial. Also, it should be noted that the Minnesota Hearing Examiners office does not have computerized records which would enable it to know with certainty just why claims are being litigated.

- **Judges who may not understand their role.**

Some people claim that certain judges tend to favor workers who are litigating and that this drives up the rate of litigation and costs.

Some judges believe that liberal interpretations of the law are justified because injured workers gave up a constitutional right when they gave up the right to sue their employers for damages.

Others feel that in workers' compensation cases, as in all cases, the burden of proof should rest entirely upon the petitioner, and that when judges feel they have a 'tie' case, they should not rule in favor of the worker. (Recent amendments in Minnesota's statute are intended to clarify that the burden of proof does, in fact, lie with the petitioner.)

- **Political controversy.**

The political controversy surrounding workers' compensation seems to foster an adversarial relationship between workers and employers. There is concern that this politically charged atmosphere encourages workers to distrust employers and employers to distrust workers, increasing litigation. Many people say it also drives the competent lawyers and doctors away from the workers' compensation system. The shortage of good doctors, delays the time it takes for employers to get independent medical examinations and thereby delays payments of benefits to workers.

- **Regulation of attorneys fees.**

There is concern that the regulation of attorneys' fees has driven attorneys away from workers' compensation cases. Workers' complain about this and lawyers agree that many good attorneys who used to handle workers' compensation cases no longer handle them.

Today, attorneys fees are regulated such that the fee is limited to a maximum dollar amount ($6500, subject to appeals) and the attorney must provide evidence to the compensation judge which justifies his fee. In other areas of the law attorneys' fees are set as a percentage of the final award and no justification of the award besides successful completion of the case is required.

There is also concern that the need to make findings to justify attorneys fees delays the settlement of cases, discourag-

ing attorneys from handling workers' compensation cases.

- **Delays by employers in reporting of injuries to insurers, and by insurers in paying benefits to workers.**

  Under current law, employers have, in most cases, 15 days from the time an injury has occurred to report this injury to their insurance company. The insurance company has 14 days from the time they are notified of a claim until they must either deny the claim or make the first payment of benefits. Consequently, up to 29 days can pass before an injured employee will start to receive benefits. It could be two weeks before an employee would hear from his employer or his employer's insurer. Under these conditions employees are said to become worried and seek an attorney's assistance. Once the attorney is retained an adversarial relationship between the worker and his employer commonly starts to develop. This can lead eventually to litigation.

- **The need for medical providers to appear at trials.**

  The state's chief hearing examiner, Duane Harvis, told us that the need for doctors to appear at trials delays litigation and adds unnecessary expense. He said that a $600 doctor's fee for court appearance is not uncommon. Harvis believes that, in most cases, judges would be able to gather adequate evidence from medical providers in written form, and that this would speed the process of litigation and reduce costs. California is one state that permits judges to use the written testimony of physicians. Minnesota permits this also, but gives lawyers the right to require the court appearance of medical providers.

Some people suspect that insurers have driven up costs by taking excessive profits.

Controversy persists over whether insurers can make excessive profits by investing premiums.

This concern existed throughout the 1970s. The contention was made that insurers had access to a stream of revenue, namely investment income, which was not being considered when rates were set. Some people supported the proposal to establish a state insurance fund to compete with private insurers because they thought it would prevent private insurers from making excessive profits through investments.

Minnesota is one of three or four states in the country that now estimates investment income insurers will make, before the state establishes workers' compensation insurance rates.[11]

This practice was recommended by the 1979 Legislative Study Commission and actually implemented in 1981. In that year the Commissioner of Insurance, Michael Markman, after a rate hearing that featured extensive intervention by the Minnesota Association of Commerce and Industry, established a rate whic included an estimate that insurers would make seven percent return on invested reserves (money put aside to pay benefits in the future as they come due).

The Commissioner's rate order reflects calculations that insurance investors will make, in total, an 18 percent return on investment when losses and expenses are subtracted from premiums and investment income.[12] In the process of making these calculations, the Commissioner estimated that insurers would lose money on underwriting (10 cents per dollar) but make money through investing premiums.

Prior to 1981, when Minnesota set insurance rates without considering investment income, insurers could, theoretically, have made large profits through investments. In fact, however, these profits probably did not occur, for two reasons. First of all, prior to 1976 the benefits in Minnesota were so low that insurance companies did not have large amounts to invest. Secondly, the practice of escalating benefits did not start until 1979, which meant that the total size of awards in the past were not as large as they are today, further suggesting that reserves were lower in the past than they need to be today.

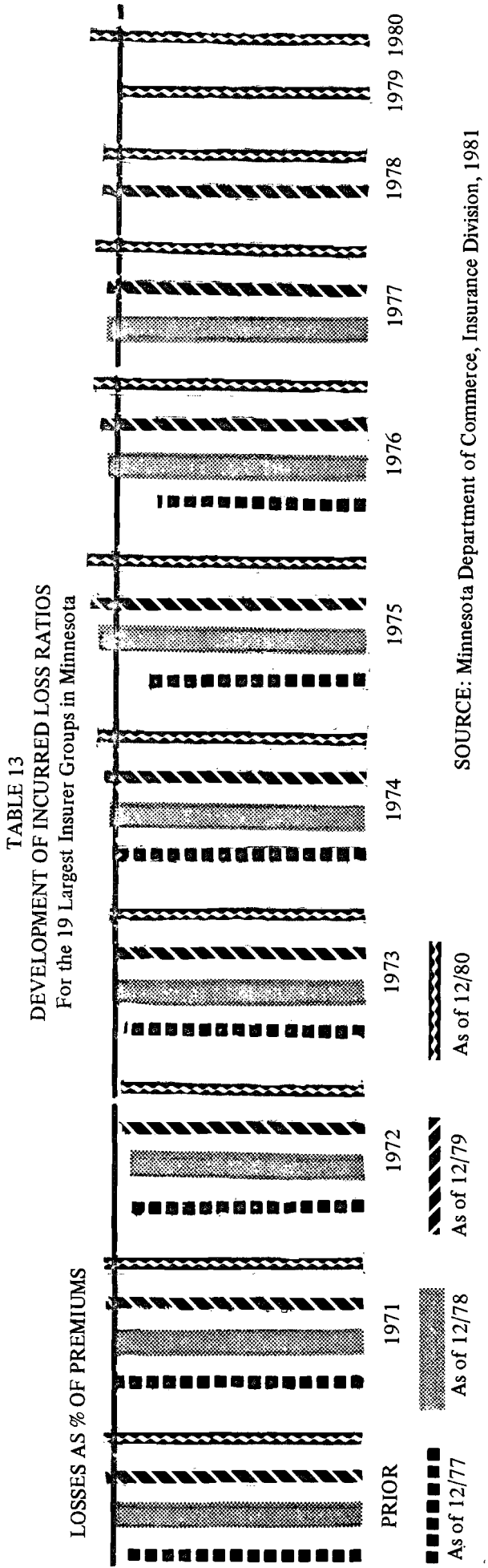
Concern has also been expressed that insurers can make excessive profits by 'over-reserving' (collecting more premiums than they need in order to maximize investment income).

Workers' compensation rates have traditionally been set so that insurers' loss payments would amount to about 62 percent of premiums collected. Rates are set to provide enough premiums so that insurers can pay their expenses, incur losses up to 62 percent of premium, and still make a profit of 2.5 to 3 percent. To the extent that losses exceed 62 percent of premium, funding for any additional reserves is provided by insurers themselves, and not by employers and policy holders.[13] The concern about over-reserving is that insurers would intentionally overestimate the losses of their clients, in order to maximize the premiums collected and thereby maximize investment income.

Insurers have, in fact, typically underestimated their losses and 'under-reserved'.

Table 13 indicates that in 1978, 1979, and 1980, insurers adjusted their reserves upward for every year from 1971 to 1977. Considering that insurers are permitted to collect premiums in any year based upon estimates of the losses that will occur in that year alone, evidence that they expanded reserves to pay for losses that occur in previous years indicates insurers were drawing down surplus. They were drawing down surplus to cover losses they did not expect would occur when they originally collected premiums.

Another reason concern about excessive profits due to over-



reserving should be limited is that Minnesota is the only state in the country that has a Workers' Compensation Reinsurance Association (WCRA).

Established in 1979, the WCRA assumes the largest liabilities of insurers, thereby reducing the amount they must reserve. It is, in effect, an insurance company for insurance companies.

As a result of their reduced reserves, individual insurers have less money for investment purposes than they used to have and would have in states that have no reinsurance association. It must also be noted that the Reinsurance Association invests the premiums it collects from insurers. Any profit it makes is considered in determining reinsurance rates for individual insurers. Currently, the Reinsurance Association estimates that it will make about six percent return on its invested reserves. Profits on invested reserves should reduce reinsurance rates. These savings for insurers should be reflected in lower employers' rates.

It is possible that insurers find it more profitable to write workers' compensation in other states than in Minnesota.

In all but three or four states investment income is not considered explicitly in the rate making process. Other states set rates in a way that assumes insurers will make two and one half cents for each premium dollar they collect (irrespective of any investment of premium) rather than lose money on underwriting, as Minnesota assumes. In addition, no other state has a Reinsurance Association.

Changes made by the 1981 Legislature with regard to insurance operations should make the industry much more competitive and efficient in its operations in the future.

Starting in 1983 Minnesota will phase-in a new system for selling workers' compensation insurance. In effect, Minnesota is deregulating the insurance industry. Whereas in the past, the state of Minnesota established a rate which all insurers had to abide by, in the future, insurers will be able to set their own rates. This should make the industry much more competitive and should force individual insurers to be more efficient in their operations.

Some people think there are problems associated with overuse of the medical system, which drive up workers' compensation costs.

Medical costs for workers' compensation cases have risen significantly in recent years, and faster than health care expenses in total in Minnesota.

Table 14 indicates the more dramatic rise in medical costs for workers' compensation cases than for health care in Minnesota generally.

TABLE 14

COMPARATIVE CHANGES IN EXPENDITURES FOR HEALTH CARE

Year	Total HC Expenditures	% Change	WC HC Expenditures	% Change
1976	2.485 B	13.9	30.732 M	19.7
1977	2.831 B	11.4	36.771 M	19.2
1978	3.155 B	12.5	43.848 M	25.1
1979	3.548 B	16.1	54.854 M	25.0
1980	4.231 B		74.439 M	
1976-1980		70.3		142.5

SOURCE: Health Care Expenditures in MN; prepared by the Center for Health Services Research, University of Minnesota May 1981

Several factors may contribute to overuse of medical services and to disproportionate increases in workers' compensation-related medical costs.

- **There are almost no incentives in the system for cost control.**

  Medical providers are guaranteed 100 percent reimbursement for their services regardless of the outcome for the workers' compensation patient or employer. It does not matter whether a provider's charges are higher or lower than charges for similar procedures performed by other providers. It does not matter whether the patient returns to work or not, or how rapidly the worker recovers.

  Employees do not have to share in the cost of medical bills associated with work-related injuries, regardless of which providers they select. This eliminates any incentive workers might have to shop for efficient providers. Furthermore, the current law states that any employer who arranges an agreement that requires the employee to share in any part of the cost is guilty of a misdemeanor.

  The 'blank check' nature of the medical system, as it pertains to workers' compensation cases, is in marked contrast to the steps being taken now to control costs in health care generally. Minnesota recently passed a law which requires medical providers and hospitals to disclose their prices so that employers and employees can 'shop' for the most efficient providers. Major health insurance carriers are developing plans to offer insurance policies in which the amount of coverage or the cost of coverage varies depending upon which medical providers are chosen by the policy holder. Organizations in the community, including the Citizens League, are encouraging employers to offer similar choices in their employee benefit packages; choices which encourage employees to select providers who offer quality care efficiently.

- **The law condones duplication of services.**

  Any worker injured on the job is free to go to any doctor he or she desires. Employers also have the right to require workers to visit a doctor the company designates. Workers may also change physicians. Although the law states that workers must have the approval of the employer or the Department of Labor and Industry in order to hold employers liable for the medical costs associated with such a change in physicians, defense attorneys contend that court decisions have effectively eliminated this requirement, making unlimited change at no cost possible. These changes in doctors, and referrals to additional doctors all contribute to duplication of services.

  Duplication of medical services may also result in cases where degree of disability is being disputed. When no agreement can be reached regarding the degree of disability a compensation judge is authorized to order an examination and evaluation by a third physician.

  Duplication occurs when employees elect to have surgery for work-related injuries. Workers who desire surgery must get a second opinion in order to hold employers liable for surgical bills, even though a second opinion does not have to support the need for surgery for the employee to select surgery at the employer's expense. This requirement may, however, discourage some workers from having surgery when it is not really needed.

- **Work-related injures may require care non-work-related injuries do not require.**

  A rating of impairment is not likely to be performed if an injury is not work related. Similarly, the reporting requirements associated with workers' compensation injuries are more extensive and demanding than those with other injuries.

- **The possibility of litigation may prompt overtreatment.**

  If a physician is concerned about being challenged in court as to his diagnosis, then the physician may perform tests or examinations that are not absolutely necessary, but which will substantiate his diagnosis.

- **The tendency of some physicians to look for organic causes of all disabilities.**

  We have been told by doctors that, because doctors are

trained in and primarily interested in acute care medicine, as compared to chronic medicine or psychology, they tend to treat workers with tests designed to identify organic illness, they delay prescribing rehabilitation and tend not to look for psychological causes of disability.[14]

Rehabilitation specialists also complain that some doctors practice as if they have the exclusive right to treat the patient and will not permit other providers or rehabilitation specialists to examine the patient until the doctor is done. Rehabilitation specialists say this attitude and treatment behavior delays rehabilitatation and jeopardizes the successful recovery of workers whose disability may be due to psychological or social problems. This delay can be especially costly in cases involving back disability.

Some people think that employers fail to give adequate attention to work place safety, and preventing injuries.

Information suggests that Minnesota does not differ significantly from other states with regard to the incidence of work place injuries.

Table 15 indicates that the percentage of employees hurt on the job in Minnesota each year is about the same as or slightly less than the percentage of workers hurt on the job in other states. While the data collected by OSHA in Minnesota does not provide much detail on the severity of injuries it does indicate that the number of work place fatalities in Minnesota dropped 36.7 percent between 1976 and 1981.

TABLE 15

PRIVATE SECTOR WORK PLACE INJURIES '75-'80
(% of workers who experience at least one lost work day due to injury)

State	1975	1976	1977	1978	1979	1980
MN	8.4	9.3	9.1	9.5	10.1	9.0
WI	11.6	11.2	11.4	11.8	--	--
IN	9.6	9.8	9.9	9.9	9.5	8.2
MI	9.6	9.2	8.8	8.7	8.7	7.4
IA	10.6	10.2	10.0	10.4	10.6	--
US	-	9.2	9.3	9.5	9.5	8.7

SOURCE: Ivan Russell, Minnesota OSHA

Testimony from a number of people indicates that investments in safety programs can provide substantial savings to employers and employees.

The most concrete evidence of this was provided to us by Robert Vandenberg, the Safety Director of General Mills. He explained the results of investments in safety by several of the Company's subsidiaries.

He said that one subsidiary reduced the number of lost time injuries per 100 full-time emplóyees from 13.9 in 1980 to a point where it has had no such injuries in the first six months of 1982. Another subsidiary cut its injury rate from 11.7 per 100 full-time employers in 1979 to 2.2 injuries in 1981.

He also explained the savings in terms of dollars to a third subsidiary that also cut its lost time injuries. In 1980 this company had been spending about $22.38 per 100 man hours for hospital and doctor bills, all other medical bills, and workers' compensation benefits. In 1981 the costs dropped to $11.20 per 100 man hours worked. In the first six months of 1982, with no lost time injuries, the cost is down to about $1 or $2 per 100 hours worked.

A fourth subsidiary experienced the same kinds of savings, reducing between 1980 and 1981 the amount spent on these costs from $33.23 to $6.71.

According to Vandenberg, essential elements in an effective safety program include: 1) commitment from top management, 2) a written manual for those responsible for work place safety, 3) training programs for a supervisory personnel, 4) motivating devices [films, movies, contests], 5) supervisor accountability for loss prevention, 6) constant effort, 7) periodic safety audits, and 8) a labor/management safety committee.

Vandenberg said that monetary rewards or penalties for safety are not necessary and can be harmful. He thinks supervisors salaries and job security should depend in part upon their safety records, just as they depend upon other measures of productivity. Vandenberg stressed, however, that safety cannot be purchased or legislated.

A resource guest who appeared before the committee provided testimony which suggests that these savings underestimate the total savings a company can experience from investments in preventing accidents. Ken Martyn, a private consultant in accident prevention, said that the costs associated with equipment maintenance replacement due to accidents is four times the cost of workers' compensation benefits and medical bills associated with accidents.[15]

The incentives to invest in work place safety are not as clear as they could be for many employers.

Self-insured employers pay, directly, the full cost of each work-related injury or illness as it occurs. For them, the costs of work place injuries or illnesses are abundantly clear. They see all the bills for every case. Only about 120 employers in the state self-insure, however, while over 82,000 buy insurance. For the vast majority of companies, therefore, insurance companies pay the

bills associated with workers' compensation cases.

Large companies that insure for work related injuries and illnesses do have some incentive to prevent these mishaps, even though they do not see the immediate dollar savings of doing so. These large employers (those who pay over $750 per year in premiums) can reduce their premiums in subsequent years. Approximately 55 percent of the employers in the state now pay less than $750 per year, however. Premiums for these companies, many of which are small businesses, do not vary depending upon accident experience. Small companies will presumably benefit from preventing accidents and illnesses in improved productivity and employee relations. Their workers' compensation rates will not go down though.

Testimony also indicates that relatively small employers have the most difficulty making investments in work place safety.

According to Ivan Russell, the Director of Minnesota OSHA, and others we talked with, small business owners are so busy trying to operate their companies in a profitable manner that they have little time to devote to accident prevention and investigation. Unlike large corporations, small companies do not have personnel who can devote full time to accident prevention.

Some think employers fail to intervene early, soon after workers are injured and thereby miss opportunities to control their own losses.

Early intervention is essential to controlling losses.

According to people in the loss control and rehabilitation fields, it is essential to intervene early to prevent workers' disabilities from growing. In their opinions, the failure of employers to do this is a major shortcoming in the Minnesota Workers' Compensation System. It results in disability and expense that could be avoided.

Understanding the merit of early intervention requires some understanding of what typically happens to people after they are injured. Anne Clayton, the manager of workers' compensation claims for ALEXSIS, an insurance broker in the Twin Cities area, described for our committee her understanding of what she called the 'pain syndrome'. Others who assisted the committee confirmed the general pattern of disability development which Clayton described.[16]

The pain syndrome begins with an injury. The injury results in pain, which leads to some degree of disability, both at work and at home. Clayton said that the extent of disability varies a lot from one person to another depending upon their ability to tolerate pain.

She explained that disability can lead to fear among injured workers (about income, family, job security, for example) fear which is often not verbalized. Fear gradually becomes depression which leads to anger. The anger is eventually vented as resentment against an employer.

Clayton and others who recommend early intervention say that the objective of employers should be to intervene immediately after the injury has occurred and the disability presents itself. This reduces the likelihood of the pain syndrome developing.

Early intervention and good loss management can save money.

Clayton displayed for the committee a sheet that she commonly uses to explain to her clients the financial advantages of returning a person to work, rather than permitting them to continue collecting workers' compensation benefits. Her explanation involved the use of five hypothetical alternative responses on the part of the employer. One response involves returning the employee to a modified, full-time job and paying him the same wage he had been making at the time of his injury. Other alternatives involve returning the employee to work at a modified job at a lower wage, or helping the employee find a job with a new employer. The final alternative involves continuing to pay the person income replacement benefits, and assumes that the person never returns to work.

Clayton indicated that the first case would cost an employer approximately $23,500, while the last alternative costs approximately $2,800,000. There are many assumptions in Clayton's model, such as the length of time it takes an employee to reach medical recovery sufficient to return to work, the length of time it might take to find someone a job with a new employer, or the length of time it might take to retrain someone. Still, her explanation was based on actual cases and on current Minnesota law. It dramatically displayed the financial advantages to an employer of returning someone to work.

Clayton also offered the results of one year of implementation of her program with several of her clients. She qualified her remarks by saying that the results of her work cannot be measured accurately yet, because the program has only been in place for slightly over one year. Still, her evaluation of the groups that have been using it indicates that they have reduced by 39 percent the frequency of their injuries, and by 35 percent their financial exposure.

Employers are the key people in managing losses.

Several people testified before the committee that employers are the key persons in managing losses. Employers are the persons who have credibility with employees. An insurer cannot, according to Clayton, for example, convince an injured worker that his employer wants to rehire him, or cares about his injury. Employers are the only persons who can do this, for they have the jobs and the authority to modify those jobs to return an injured person to work. Employers also have the ability to make a

corporate commitment to loss control, and to hold supervisors and managers accountable for how they control their losses. Holding persons accountable for their accidents and loss control performance was mentioned by the safety consultants we talked with as an essential ingredient in a safety program.

Several factors have been mentioned as obstacles to good loss management.

A common complaint among employers is that they have no light duty jobs for injured workers. This complaint seems plausible to us for some small employers who have very few clerical, administrative or supervisory personnel. We have been told, however, that many employers can often modify several jobs in order to create one or two light duty jobs. In other words, light duty may exist even though employers do not think it does.[17]

A second complaint we heard is that union seniority policies, which prevent younger workers from 'bumping' older workers from jobs, sometimes makes it difficult for employers to place injured workers in light duty jobs that may exist. This would clearly be the case when the injured workers are relatively young.

The committee also received testimony that many employers do not realize their own ability to control losses. David Evert, a loss control specialist with Control Data Corporation Business Advisors, Inc., said he thinks most companies believe their objective regarding workers' compensation is to minimize payments, instead of minimizing disability. Clayton said that many of the employers she has seen think their primary role is to pay benefits. They recognize little responsibility to manage the system after an injury occurs, nor do they recognize the savings they can achieve through effective loss management.

Another obstacle to returning injured employees to work is the uncertainty employers have about who will pay if the employee is reinjured. The obstacle seems especially great in cases where the pre-existing condition is the result of a back injury or an occupational illness.

Minnesota statute states that, "if an employee incurs personal injury and suffers disability that is substantially greater, because of a pre-existing physical impairment, than would have resulted from the personal injury alone, the employer shall pay all the compensation...but shall be reimbursed from the special compensation fund for all expenses paid in excess of 52 weeks of income replacement benefits and $2,000 of medical expenses."[18] (The special compensation fund is financed by all employers in the state.) In order to qualify for reimbursement the employer must register the employee within 180 days of the second injury showing a medical report made prior to the injury indicating the pre-existing impairment. Only certain kinds of pre-existing impairments are eligible as well.

Reimbursement cannot be claimed if the second injury results in a permanent partial disability to a scheduled member of the body. (In such cases the employer must pay all expenses related to the disability.) Also, the employer is not eligible for reimbursement if claim is an occupational disease and if the employee has been employed by the employer in a job similar to that which initially resulted in the occupational disease.

Rehabilitation specialists and others report that employers may hesitate to hire workers with pre-existing conditions because the employer is unaware of the special compensation fund reimbursement, or the rules regarding liability for second injuries, or uncertain about whether they will be able to prove 'substantially greater disability' when trying to qualify for reimbursement. Also, it cannot be encouraging for employers to know that the special compensation fund is one to four years behind in reimbursing employers in cases of second injuries.

Just as with accident prevention, small employers reportedly have difficulty devoting much time to loss control.

Small employers do not have the personnel flexibility of large companies, who may be able to assign a person full time to loss control. Small employers also may not have as much flexibility with regard to types of jobs as large companies have, making it more difficult for small employers to return people to work.

Some people think Minnesota's workers' compensation system could be administered more efficiently and effectively.

Wisconsin is widely recognized as having one of the most effective, if not the most effective, state agency administering workers' compensation.

We heard praise for the Wisconsin state agency from people in Minnesota, people in Wisconsin, as well as people outside Minnesota who do research on workers' compensation matters.

The comments of these observers and our own research suggest that the following factors are particularly important to the success of the Wisconsin system and distinguish Wisconsin from Minnesota.

Wisconsin is more aggressive than Minnesota at monitoring cases.

Wisconsin has approximately 19 people involved in claims monitoring on a full time basis. They are supported in this activity by provisions in statute which require employers to inform the division that a work place injury has occurred within four days of the third day of lost time for that injured employee. Similarly, Wisconsin law provides that employers must either deny a workers' compensation claim or make the first wage loss payment to an injured worker within 14 days of receiving knowledge of the worker's injury.

The Wisconsin Department has aggressive procedures for follow-

ing up on delayed payments. There are penalties assessed, but more important it seems are the procedures the Department uses to follow up on insurance companies. When the Department learns of a late payment a notification letter is sent to the employer or insurer immediately. Annually, a "promptness of payment report" is produced and sent to all insurers and to others. This report indicates how well each insurer in the state is doing with regard to paying workers' compensation benefits in a prompt manner. This report is said to have the effect of making insurers competitive with regard to making prompt payments.

In Minnesota there are about 22 people involved in monitoring claims. Minnesota law provides that employers must notify the state agency about the injury within 15 days of an injury that involves three days of lost time. Minnesota has the same 14-day limit for denial of claim or payment of the first benefit, and the state also has the notification procedure for insurers and employers who are late in making payments. The state, however, has nothing similar to the promptness of payment report described by Wisconsin officials.

Wisconsin state attorneys seem to put more emphasis than Minnesota's attorneys do in providing advice and trying to minimize litigation.

The workers' compensation division of the state agency in Wisconsin has 15 attorneys who work full-time, providing advice to injured workers and employers mediating claims that involve disputes. The department does not provide any attorneys for workers who decide to take their case to court. Furthermore, the 15 attorneys who provide pre-trial mediation services are the same people who act as judges for workers who decide to take their case to court.

Minnesota, in contrast to Wisconsin, has three attorneys in the state agency who provide information and mediation services, and ten attorneys who are available to represent workers in court. Minnesota also has a separate group of people who serve as judges for workers' compensation cases in the State Office of Hearing Examiners. There are 18 such judges.

Some people have suggested that litigation could be reduced if the State of Minnesota put more emphasis on providing mediation services and less on providing legal representation to injured workers. Also, some people contend that the administration of any workers' compensation system is more efficient if the litigated and non-litigated portions of the system are integrated under one official. This is said to provide more consistent interpretation of law and a less adversarial environment.

Minnesota and Wisconsin also differ in the way they handle the initial appeal of workers' compensation cases. Minnesota has a Workers' Compensation Court of Appeals, which handles only workers' compensation cases, whereas Wisconsin has something called the Labor and Industry Review Council which hears appeals on workers' compensation, unemployment compensation, and equal rights cases.

Some people have suggested that an appropriate response to the concern about judges on Minnesota's Workers' Compensation Court of Appeals might be to have a system where judges handle more than just workers' compensation cases.

The Wisconsin Division of Workers' Compensation also holds 12 educational seminars each year for employers and insurers, designed to assist them in understanding the workers' compensation system and their role and responsibility in it. In Minnesota, no such seminars are sponsored by the Department of Labor and Industry or any other state department, although Labor and Industry officials take speaking engagements upon request.

Wisconsin has more people than Minnesota to research the system and the effect of workers' compensation law.

Wisconsin's Workers' Compensation Division has 12 people who are full-time research analysts. They do research on the cost of the system, the growth areas that affect the system, and the impact of proposed and existing legislation. Minnesota's Department of Labor and Industry has no research division.

Some people say Minnesota's costs are higher because our benefit levels are relatively high.

In fact, while the maximum income replacement benefit in Minnesota is higher than the same benefit in South Dakota, Minnesota's benefit is almost identical to the benefit in Wisconsin, and is 46.7 percent lower than the benefit in Iowa.

A person totally disabled in Minnesota in 1982 could get a maximum income replacement benefit of $289 per week. In Wisconsin the same person could get a maximum of $286. In Iowa that person could get a maximum of $501. In South Dakota that person could get a maximum of $208.

In addition, while the maximum permanent partial award in Minnesota is higher than the maximum in other states, the permanent partial award a worker making the average weekly wage in Minnesota should get is not significantly different than the same award a worker in Wisconsin earning the average weekly wage should get.

Table 16 indicates the size of the permanent partial award a worker in Wisconsin and a worker in Minnesota should receive if each were making the average weekly wage in his respective state. It is true that the average permanent partial award in Minnesota is higher than the average permanent partial in Wisconsin. This is likely to be a function of judicial decisions and case law. The table is intended to indicate that the benefit

TABLE 16

STATUTORY PERMANENT PARTIAL AWARDS FOR WORKERS EARNING THE AVERAGE WEEKLY WAGE ($289)

Injury	Minnesota Award	Wisconsin Award
25% loss of use of hand	$193 x 220 wks x 25% = $10,615	$90 x 400 wks x 25% = $9,000
50% loss of use of arm*	$193 x 220 wks x 50% = $21,230	$90 x 450 wks x 50% = $20,250
25% loss of use of leg	$193 x 195 wks x 25% = $9,408	$90 x 500 wks x 25% = $11,250
50% disability to back	$193 x 350 wks x 50% = $33,775	$90 x 1000 wks x 50% = $45,000

* The Minnesota award assumes that enough of the limb remains to permit the use of the artificial member.
SOURCE: Citizens League staff

levels outlined in statutes in the two states are not as different as a comparison of the maximum benefits in each state would suggest.

Data indicates that high premium rates and high costs are not strictly a function of high benefit levels.

Tables 17 and 18 indicate that there are at least six states whic have higher maximum income replacement benefits, but lower rates than Minnesota. The tables also indicate that at least four of the six states with higher maximum income replacement benefits and lower rates than Minnesota, also have higher maximum permanent partial benefit levels than Minnesota has.

In comparison to its neighboring states, the Minnesota maximum income replacement benefit is 22 percent higher than in South Dakota; about the same as Wisconsin, and 46.7 percent less than Iowa. Still, Minnesota rates are more than 70 percent higher than rates in Wisconsin, 91 percent higher than rates in South Dakota, and 38 percent higher than rates in Iowa.

In comparison to its neighbors, the Minnesota maximum permanent partial benefit levels are higher than those in Wisconsin and South Dakota, but lower than those in Iowa.

Some people think that Minnesota's high costs and high disability problems are a function of the 'benefit structure', which outlines when people are eligible for benefits and how much they should receive.

There are a number of concerns about the impact of the benefit structure on employees' incentives to return to work.

- **Some people say that the open ended nature of eligibility for income replacement benefits discourages some people from returning to work.**

  In Minnesota there is, practically speaking, no difference between temporary total and permanent total income replacement benefits. An injured worker is entitled to temporary total disability benefits for as long as the injury or its residual effects prevent him from obtaining substantial and gainful employment. In evaluating continuing eligibility the employee's background, training and experience, coupled with the job opportunities in his labor market must be considered. At the same time a worker is receiving temporary income replacement benefits in Minnesota he may be eligible to receive benefits for permanent partial disabilities.

  In Wisconsin, in contrast, eligibility for temporary total disability benefits ends at the time a worker reaches maximum medical recovery. At this point, the person may be entitled to other benefits if he is permanently partially disabled, but the employers obligation to pay temporary total income replacement benefits end at maximum medical recovery.

  Some people believe that the absence of a cutoff point, or healing period in Minnesota, combined with the fact that workers can receive both income replacement and permanent partial award concurrently, discourages workers from returning to work. One piece of evidence they use to support this thesis is the extraordinarily high number of permanent total disability cases in Minnesota compared to the number in Wisconsin.

  Other people say that the lack of a cutoff point may be a problem for some workers who are disabled for a relatively long period of time. They agree that the longer a person is out of work the harder it is to go back. They contend, however, that most workers want to go back to work, and are not disabled for long periods of time. These people, they say, do not need a cutoff date to encourage them to return to work.

  There is controversy over whether injured employees in Wisconsin whose workers' compensation benefits have run out and who are unable to find a job, end up drawing benefits from public assistance programs, such as unemployment

TABLE 17

COMPARISON OF SELECTED STATES RATES AND BENEFITS (January 1, 1982)

Average Earned Premium Rate 1982	State	Income Benefit % of Wages	Maximum Weekly Payment Amount	Rate	Automatic C.O.L. Increase	Other
2.96	MN	66 2/3 GW	$289	100% SAWW	Oct. 1	
3.53	AL	66 2/3 GW	$942	200% SAWW		
2.14	IA	80% spendable earnings	$501	200% SAWW		
2.51	IL	66 2/3 GW	$403.12	133% SAWW	PT 6-15 of second year	
?	WY	66 2/3 GW	$415.66	100% SAWW		PT benefit is 66 2/3 SAWW plus lump sum per child calculated at $50 per month until 18 (21 if invalid)
2.07	D.C.	66 2/3 up to 80% of SE	$396.78	100% SAWW	PT Oct. 1 (5% maximum)	
4.02	ME	66 2/3 GW	$367.25	166 2/3	July 1	
2.68	CT	66 2/3 GW	$310-465	100% SAWW	Oct. 1	Comp. increased to 75% of wages if employer violates OSHA regulations
3.08	MI	80% SE	$307	90% SAWW	PTs injured prior to 1/1/82	
?	OH	72% for first 12 weeks; 66 2/3% thereafter	$298	100% SAWW		PTs benefit adjusted annually according to CPI
3.06	PA	66 2/3 GW	$284	100% SAWW		
?	OR	66 2/3 GW	$286.88-$311.88	100% SAWW		Employer may be sued for damages for failure to comply with posted notice of violation of safety code
2.04	MA	66 2/3 GW	$296.93	100% SAWW		
1.74	WI	66 2/3 GW	$286	100% SAWW		
1.55	SD	66 2/3 GW	$208	100% SAWW		

SOURCE: State Workers' Compensation Laws, U.S. Department of Labor, January 1982
GW = Gross Wage SAWW = Statewide Average Weekly Wage SE = Spendable Earnings CPI = Consumer Price Index
PT = Permanent Total

TABLE 18

MAXIMUM INCOME BENEFITS FOR SCHEDULED INJURIES

State	Arm at Shoulder	Hand	Thumb	First Finger	Second Finger	Third Finger	Fourth Finger	Leg at Hip	Foot	Great Toe	Other Toes	One Eye	Hearing in 1 Ear	Hearing in both Ears
MN	72,090	58,740	17,355	10,680	9,345	6,675	5,340	58,740	44,055	9,345	4,005	42,720	22,695	45,390
WI	45,000	36,000	14,440	5,400	4,050	2,340	2,520	45,000	22,500	7,500	2,250	24,750	4,950	29,700
SD	41,600	31,200	10,400	7,280	6,240	4,160	3,120	33,280	26,000	6,240	2,080	31,200	10,400	31,200
AK	43,680	33,600	10,400	6,440	4,200	3,500	2,100	40,320	28,700	5,320	2,240	22,400	7,280	28,000
CT*	96,720	78,120	29,450	16,740	13,640	9,610	8,060	73,780	61,380	13,020	4,030	72,850	16,120	48,360
D.C.*	123,795	96,814	29,759	18,252	11,903	9,920	5,952	116,653	81,340	11,903	6,348	63,485	20,633	79,356
IL*	94,733	76,593	28,218	16,125	14,109	10,078	8,062	80,624	62,484	14,109	4,837	64,499	14,113	56,450
LA*	115,250	87,590	27,660	16,135	13,830	11,525	9,220	101,420	69,150	18,440	6,915	64,540	23,050	80,675
ME*	73,450	60,596	18,363	11,752	10,283	7,345	6,243	73,450	60,596	9,181	3,673	36,725	18,363	73,450
MI*	82,583	66,005	19,955	11,666	10,131	6,754	4,912	66,005	49,734	10,131	3,377	49,734	3,377	49,734
MA	11,140	8,675	-	-	-	-	-	9,900	7,425	-	-	9,900	7,425	19,800
OH	33,535	26,075	8,940	5,215	4,470	2,980	2,235	29,800	22,350	4,470	1,490	18,625	3,725	18,625
OR	19,200	15,000	4,800	2,400	2,200	1,000	600	15,000	13,500	1,800	400	10,000	6,000	19,200
WY	41,568	33,809	12,193	8,036	4,157	4,157	4,157	41,568	27,712	5,542	1,940	26,049	11,085	-
PA*	116,440	95,140	28,400	14,200	11,360	8,520	7,952	116,440	71,000	11,360	4,544	78,100	17,040	73,840

* Maximum benefits are higher, generally, than Minnesota's.
SOURCE: State Workers' Compensation Laws, U.S. Department of Labor, January 1982

compensation or social security. If this were true, the cost differences between Minnesota and Wisconsin in terms of workers' compensation costs may inaccurately reflect the true cost differences between the states in terms of work place injuries. Wisconsin's workers' compensation costs would presumably be higher than they are today if workers were able to continue collecting workers' compensation until they can find a job, as they are able to in Minnesota.

The administrators of the workers' compensation and the unemployment compensation systems in Wisconsin do not know how many people collecting unemployment compensation in Wisconsin came from workers' compensation programs. Similarly, the federal government does not know how many people in Wisconsin receiving social security disability benefits were, at one time, receiving workers' compensation benefits.

We do know that the working age population in Wisconsin (18-64 years) is about 15 percent greater than the same population in Minnesota, that the number of people collecting unemployment compensation in Wisconsin on October 9, 1972 was about 11.5 percent higher than the number doing so at that time in Minnesota, and that the number of people collecting social security disability benefits in Wisconsin is about 51.8 percent higher in Wisconsin than in Minnesota.[19]

When asked about the possibility that unemployment compensation was picking up costs in Wisconsin that were paid by workers' compensation in Minnesota, the assistant administrator of Wisconsin's workers' compensation system said he doubted it, because approximately 94 percent of the injured workers in Wisconsin return to work within three months of their injury.[20]

- **Some people think the size of the permanent partial and income replacement benefits, combined with the right of workers to receive both concurrently, discourages injured workers from returning to work.**

Workers in Minnesota can receive both permanent partial and income replacement benefits concurrently under the following conditions:

- If the employee is receiving income replacement benefits for permanent total disability.
- If the employee has completed rehabilitation but the employer has not offered the employee a job the employee can do in his permanently partially disabled condition and the employee cannot find such work with another employer.[21]

Considering that there is no cutoff date in Minnesota for

eligibility for income replacement benefits, some people think it is too easy for injured workers to collect both income replacement benefits and a permanent partial award. Considering the relatively large size of these benefits, some people believe the injured workers who receive both concurrently may be discouraged from returning to work.

In other states permanent partial awards can never be received at the same time that income replacement benefits are received. In Wisconsin, for example, permanent partial awards are paid after the employee has reached maximum medical recovery and his temporary total income replacement benefits have been discontinued. If the income replacement benefits continue, he does not receive a permanent partial award.

The reason the benefits are structured differently in other states is that the purpose of permanent partial awards is different. In Wisconsin permanent partial awards, like income replacement benefits, are intended to compensate injured workers for lost wages. Permanent partial awards happen to be based in part upon ratings of physical impairment, but impairment is to be used as a surrogate for lost earning capacity. The award is intended to compensate for future lost earnings. In Minnesota, in contrast, permanent partial awards and other benefits can be received concurrently, because permanent partial awards are intended to compensate injured workers for impairment *per se*. Other benefits are provided to compensate for lost earnings.

The reason the benefit structure in Minnesota is relatively expensive and may discourage return to work, is that the levels of both permanent partial and income replacement benefits here are comparable to the levels of these benefit types in Wisconsin and other states. Table 19 shows how, because of differences in benefit structure, an injured worker would be treated differently in Minnesota than in Wisconsin.

In summary, the issue is how to deal with the combination of permanent partial and income replacement benefits in Minnesota. One option is to adopt a system like the one in Wisconsin, where permanent partial awards are intended to compensate for future lost earnings. They would be paid only after a worker reaches maximum medical recovery and other income replacement benefits have been discontinued. There would be no right to receive both types of benefits concurrently.

A second option for Minnesota would be to continue to pay permanent partial awards for impairment *per se*, and permit concurrent receipt of income replacement benefits, but reduce the size of one or both of the benefit types, in order to bring costs here in line with costs in other states. The Insurance Division's 1982 report recommended a version of this approach. It suggested reducing the size of permanent partial awards, but continuing to pay both permanent partial impairment awards and income replacement benefits concurrently. The report's recommendation, however, was not made merely to reduce costs here. The recommendation reflects a policy that impairment awards be secondary in size and importance to income replacement benefits. The recommendation reflects a policy that impairment awards be secondary in size and importance to income replacement benefits. The drafters of the report felt that the primary purpose of the workers' compensation system should be to protect workers against lost earnings due to injury or illness and that impairment should be compensated only to the extent that the system could afford this, after providing wage loss protection.

TABLE 19

BENEFITS IN MINNESOTA & WISCONSIN FOR INJURED WORKERS MAKING THE AVERAGE WAGE WHO LOSE A THUMB

	MINNESOTA	WISCONSIN
January 1	Loses thumb	Loses thumb
	↓	↓
	Collects TT benefits totalling $289 per week	Collects TT benefits totalling $286 per week
	↓	↓
July 1	Reaches maximum medical recovery; receives $18,785	Reaches maximum medical recovery; receives $14,400
	↓	↓
	If a worker completes rehab, but can't find a job, or gets a job at a reduced wage, is declared PT or retires, employer continues to pay TT or TP benefits	Employers obligation to pay TT or TP ends

SOURCE: Citizens League Staff 1982

TT = Temporary Total TP = Temporary Partial PT = Permanent Total

- **Some people are concerned that the way income replacement benefits are calculated replaces too much income for some workers, and thereby discourage them from returning to work.**

There are five features of the benefit structure which influence the size of income replacement benefits and which concern people who suspect that too much income is being replaced for some workers. These features are:

- Benefits are based on gross wages and are tax free[22]
- Benefits are escalated annually[23]
- Extra benefits are automatically given after 104 weeks of disability so that no one gets less than 65 percent of the statewide average weekly wage[24]
- The minors with permanent impairments regardless of their wages, automatically get the maximum benefit[25]
- The minimum benefit gives low wage earners more than they were getting working[26]

The following paragraphs describe each feature and specific concerns with it.

Table 20 indicates that, by calculating income replacement benefits based on *gross wages and making them tax free,* Minnesota replaces between 82 percent and 104 percent of the take home pay for workers, depending upon their income and family status. The table also indicates that the people who would have the greatest percentage of their income replaced are those who make the least amount of money ($170 or less per week). These people would receive between 92 and 104 percent of the take home pay in workers' compensation benefits. About 20 percent of the workers in Minnesota make $170 or less each week.

The nationally accepted standard for an 'adequate' income replacement benefit is 80 percent of take home pay. Consequently some people contend that Minnesota's benefits are too generous.

There is, however, no apparent scientific basis for the

TABLE 20

PERCENTAGE OF TAKE HOME PAY PROVIDED BY MINNESOTA TOTAL DISABILITY BENEFITS
STATEWIDE AVERAGE WEEKLY WAGE: $267.00

Single								
Weekly Wage	170	(8840/yr)	267	(13,884/yr)	350	(18,200/yr)	450	(23,400/yr)
Deductions	1	2	1	2	1	2	1	2
Federal Tax	22.80	18.80	44.20	39.20	70.30	64.30	104.40	97.70
FICA (6.65%)	11.31	11.31	17.76	17.76	23.28	23.28	29.93	29.93
State Tax	6.90	6.00	13.50	12.70	20.50	20.00	28.20	27.80
Total Deductions	41.01	36.11	75.46	69.66	114.08	107.58	162.53	155.43
Take Home Pay	128.99	133.89	191.54	197.34	235.92	242.42	287.47	294.57
WC Benefit	134.00*	134.00*	178.09	178.09	233.45	233.45	267.00+	267.00+
% of Take Home	104	100	93	90	99	96	93	91
Married								
Weekly Wage	170	(8840/yr)	267	(13,884/yr)	350	(18,200/yr)	450	(23,400/yr)
Deductions	2	4	2	4	2	4	2	4
Federal Tax	13.80	7.80	30.60	23.10	50.30	41.40	76.20	65.40
FICA	11.31	11.31	17.76	17.76	23.28	23.28	29.93	29.93
State Tax	6.40	4.50	13.60	11.90	21.60	21.10	30.50	29.40
Total Deductions	31.51	23.61	61.96	52.76	95.18	85.78	136.63	124.73
Take Home Pay	138.49	146.39	205.04	214.24	254.82	264.22	313.37	325.27
WC Benefit	134.00*	134.00*	178.09	178.09	233.45	233.45	267.00+	267.00+
% of Take Home	97	92	87	83	92	88	85	82

* = Qualifies for 50% SAWW Minimum + = Reached 100% SAWW Maximum WC = Workers' Compensation

SOURCE: Minnesota Insurance Division, January 1982

nationally accepted standard for an adequate income replacement benefit. People disagree on whether replacing more than 80 percent of a person's take home pay would unduly discourage return to work. We talked with officials from one company, for example, who reported little trouble returning injured employees to work, even though the company pays injured workers full salary while they are out. Also, data are not available to permit comparisons between injured workers of different income levels in terms of the length of time they collect benefits.

With regard to the second feature, there is no question that the *escalation* of all income replacement and death benefits annually adds to the cost of Minnesota's workers' compensation system and makes costs here higher than costs in other states. The Insurance Division's 1982 report states that "primarily because of benefit escalation, permanent total benefit payments in Minnesota will be two to three times as much as the cost of the same benefit type in other states".[27] Wisconsin, for example, has no such benefit escalation provision in its workers' compensation statute.

Most of the people we talked with agreed that escalation of benefits is justified to protect workers against erosion of income due to inflation. Some people, however, suggested that the escalation be delayed (some said for two years after the date of injury) to assure that benefits are escalated only for people with long term disabilities.

The third feature of the benefit structure that concerns some people is the *supplementary benefits* given to lower paid workers (earning less than roughly $10,000 per year). Any injured worker who has been receiving temporary total or permanent total income replacement benefits for 104 weeks is eligible to receive supplementary benefits which will bring his total benefit up to 65 percent of the statewide average weekly wage (SAWW). These benefits will be adjusted annually also, based upon changes in the statewide average weekly wage.

To understand the impact of this, consider a single person claiming one deduction making $170 per week at a time when the statewide average weekly wage is $267. (The SAWW in 1981 was $267). This person, if injured, would qualify immediately for the minimum temporary total benefit (50 percent of the statewide average weekly wage or his actual wage, whichever is less) because 66 2/3 of his wage ($128) is below 50 percent of the SAWW. His statutory minimum ($134) would replace approximately 104 percent of his take home pay while working. See Table 20.

If the worker were still collecting benefits after 104 weeks, he would be eligible to receive a supplementary benefit to bring his total benefit up to 65 percent of the statewide average weekly wage. Assuming the statewide average weekly wage increased eight percent per year during the two years following his original injury, the SAWW at the time he became eligible for supplementary benefits would be $311. The workers new benefit total, after receiving the supplementary benefit would be $202. If the worker did not receive the supplementary benefit, but only the six percent escalator, two years after his injury he would be receiving about $150 or 102.7 percent of his take home pay had he kept working and if his original wage had escalated at eight percent per year. The effect of the supplementary benefit is to increase the worker's benefit to $202 per week, or 135 percent of the amount he would have been making had he continued to work and had his wage increased eight percent per year. In summary, the supplementary benefit substantially increases the minimum benefit for low income workers.

There is also an equity issue associated with supplementary benefits. Injured workers who receive supplementary benefits have these benefits escalated based upon changes in the statewide average weekly wage, whereas injured workers who receive only income replacement benefits have their benefits escalated at a maximum of six percent. To the extent that the statewide average weekly wage escalates at something other than six percent, injured workers are treated differently.

The fourth feature of concern is the way *minors' benefits* are calculated. Minors who incur a permanent total or permanent partial disability are automatically eligible for the maximum temporary total, temporary partial, retraining, permanent partial and permanent total disability benefits. For example, in 1982 a minor would get $289 per week in temporary total benefits if he incurred such an injury. If he were treated like other older workers instead, he would receive 66 2/3 percent of his pre-injury wage. If he were making the minimum wage and working 40 hours a week he would be making about 200 per week and if injured, receive a temporary total benefit of approximately $134 per week. By qualifying for the maximum benefit automatically, this person actually would get $289 per week, or 144.5 percent of his pre-injury gross wage.

Some people think that it makes good sense to give the maximum benefit to minors who are permanently and totally disabled, for they are presumably making much less than they would have made if they had never been injured. Giving the maximum to minors with permanent partial injuries, however, according to some people, makes it difficult to encourage such minors to return to work. At the same time it is very expensive for employers.

The fifth feature of the benefit structure that concerns some people is the *minimum benefit.* In 1982, the lowest benefit an injured worker can receive is 50 percent of the

statewide average weekly wage ($145 today), or the injured employees actual weekly wage, whichever is less. In no case, however, shall the weekly benefit be less than 20 percent of the statewide average weekly wage ($57.80).

The effect of this maximum benefit in 1981 was to give anyone making less than $134 but more than $58 per week, 100 percent of his gross wage if he got hurt. A single person making $133 per week in 1981 would have received this if injured. This workers' compensation benefit would have amounted to approximately 116 percent of his take home pay. A married person claiming no deductions (a second income in the same household, for example) making $133 would also have received a workers' compensation benefit of about 116 percent of his take home pay.

Some people think this minimum benefit provision is too high and makes it difficult to encourage some people to return to work.

- **Some people are concerned that rehabilitation benefits are calculated in a way that provides incentives to use the longest and most expensive form of rehabilitation, namely 'retraining'.**

Injured workers may be eligible to receive several different kinds of rehabilitation services, including physical therapy, work evaluation and counseling, job placement, job modification advice, on-the-job training, or retraining and further education.

The statute provides the injured workers involved in retraining programs are eligible to receive up to 156 weeks of compensation in an amount equal to 125 percent of the rate of temporary total disability. No other form of rehabilitation has as high a compensation rate.[28]

Some people believe this bonus for retraining encourages this type of rehabilitation. Their concern is due partly to the higher cost associated with retraining, but also due to the fact that evidence does not support retraining as a more effective form of rehabilitation. The Minnesota Department of Labor and Industry, for example, does not know which forms of rehabilitation are most effective.

A second set of concerns pertains to features of the benefit structure that seem to some people inequitable or unfair to workers, employers or both.

- **Workers with the same incomes do not necessarily get the same workers' compensation benefits, because income replacement benefits are based upon gross wages and are not subject to taxation.**

Table 20 indicates the income replacement benefits for workers in different income tax and family situations. Single people who make $267 per week (the statewide average weekly wage in 1981) and claim one deduction would have a greater percentage of their spendable earnings replaced by workers' compensation benefits (93 percent) than would married workers who make the same income and claim two deductions (87 percent).

- **Workers with the same permanent partial impairments do not necessarily get the same awards, because scheduled permanent partial award are based on pre-injury wage.**

There are certain kinds of permanent partial disabilities which are listed, along with the appropriate award, in statute. For example, the loss of a hand is one of many injuries listed in the statute. These types of injuries are called 'scheduled' permanent partial disabilities. There are other injuries not listed in statute. These are called 'non-scheduled' disabilities.

The award for scheduled permanent partial disabilities is generally calculated by multiplying 66 2/3 of the injured workers income at the time of injury, by the percentage of disability, by the number of weeks assigned to the body member in the benefit structure.[29]

Including pre-injury wages in the calculation implies a policy judgment that the hand, for example, of a low income workers is worth less than the hand of a higher paid worker. It also fails to reflect differences between employees in terms of the effect of impairment on *actual* future lost earnings.

- **Workers with the same permanent partial disabilities and the same incomes do not necessarily get the same awards either, because 'unscheduled' permanent partial awards are based on actual lost earnings rather than presumed lost earnings.**

Scheduled permanent partial injuries are compensated regardless of the actual impact on the injured workers' future earnings. In contrast, compensation for non-scheduled permanent partial injuries depends upon wage loss resulting from the injury. With non-scheduled injuries there is no presumption of future lost earnings. Specifically, for non-scheduled injuries the statute states that compensation is equal to 66 2/3 percent of the difference between the workers wage at the time of injury and the wage he is able to earn in his partially disabled condition, subject to certain limitations.

Similarly, the statute states that in cases of permanent partial disfigurement or scarring, those workers whose employability or advancement is affected by the injury are eligible for permanent partial awards. Those workers not so affected are not eligible.[30]

- **Workers health care coverage is discontinued while they are collecting workers' compensation benefits.**

  A worker who is injured has his medical bills associated with his work place injury covered by his employer. Any family health care coverage the employer provides the worker, however, may be discontinued while the worker is collecting workers' compensation benefits.

- **Some people think it is unfair and expensive to require employers to pay for that portion of disability which is due to a pre-existing condition caused by a non-work-related accident.**

  Today, Minnesota employers, either individually or together, pay benefits upon the entire disability of injured workers, even if some of the disability is due to a prior non-work-related injury. Employers are not charged just for the portion of disability due to the work injury.

  For example, if an employee is injured in a summer softball game to the extent that he has a five percent disability to his back, and then incurs another injury at work which adds another five percent disability to the back and is unable to work, his employer is liable for workers' compensation benefits for 10 percent disability to the back.

  Some people think this is unfair. Other people think it is fair for employers to pay for 100 percent of the disability even though some of it may be due to a pre-existing condition. These people contend that if it were not for the work place injury, the employee would be working.

- **Some people think it is unfair and expensive to require employers to pay twice for the lost earnings of workers who incur permanent partial disabilities.**

  Considering that workers can receive both income replacement and permanent partial impairment awards concurrently in Minnesota, and considering that both types of awards are based upon pre-injury wages, employers here, in effect, compensate injured workers with permanent partial disabilities twice for lost earnings. In Wisconsin, in contrast, employers pay for lost earnings once, either in the form of a permanent partial award or a temporary total income replacement benefit. Employers almost never pay both benefits at the same time.

  The recommendations in the Insurance Division's 1982 report would have corrected this situation by changing the way permanent partial benefits are calculated. The report recommended giving workers awards that are not based on pre-injury wages. Another way to remedy this situation would be to prohibit concurrent receipt of permanent partial and other income replacement benefits.

- **Some people think it is unfair and expensive to require employers to pay a 'bonus' award in cases of disability to two or more body members or organs.**

  In cases of multiple permanent partial disabilities, the award for each disability is increased by 15 percent. In Wisconsin, no such 'bonus' award is given.[31]

- **Some people think it is unfair and unnecessarily expensive for employers to delay the reduction of workers' compensation benefits in cases where social security disability benefits are received.**

  Some workers who are injured are eligible for both social security benefits and workers' compensation benfits. In Minnesota, workers' compensation benefits are reduced $1 for each dollar received in social security disability benefits, after the employee has received $25,000 in workers' compensation benefits.[32]

  In Wisconsin, in contrast, workers' compensation benefits are reduced immediately in an amount equal to the social security benefit.

  Also, if a Minnesota employee's workers' compensation benefit falls below 65 percent of the statewide average weekly wage because of the social security offset, supplemental benefits are paid in order to restore the worker's compensation benefit to the 65 percent level.

  Some people believe that the result of these policies is to require Minnesota employers to pay more than is necessary for workers to get the same benefits. The issue is not whether the benefits are appropriate for workers. The issue is whether the federal government or Minnesota employers will get the benefit of an offset. The amount of money going to workers remains almost exactly the same in either case.

A third set of concerns pertains to the impact of the benefit structure on incentives to litigate.

- **Some people think that the maximum income replacement benefit fails to replace enough income for some workers, thereby encouraging them to litigate for permanent partial awards.**

  The maximum income replacement benefit a worker could get in Minnesota now is $289 per week. People who make $433 in gross income would, if injured, receive this amount. People who earn more than $433 would still get only $289 on workers' compensation.

  People making $433 per week in Minnesota take home an after tax income of between $276 and $312, depending

upon family status and deductions. For these people workers' compensation would replace between 92 percent and 104 percent of their take home pay. Generally speaking, the more a person makes in excess of $433 per week, the lower the percentage of his take home pay would be replaced by workers' compensation benefits. A person making $14 an hour or $30,000 per year ($576.92 per week), for example, would take home $289 per week on workers' compensation, or between 71 and 79 percent of his take home pay. About eight percent of the workers in Minnesota earn more than $576 per week. The average weekly wage for workers in mining and construction industries is $477 per week. A workers' compensation benefit of $289 would replace between 85 and 96 percent of the take home pay for such workers.

Some people are concerned that workers for whom the maximum workers' compensation benefit is inadequate may litigate to try to receive a permanent partial award. There is also concern that lawyers, judges, and others in the workers' compensation system will find ways to supplement benefits when they find a situation in which the statutory award is clearly inadequate. In the process they may violate the letter of the law or damage the predictability of the system.

Other people admit that inadequate income replacement benefits may lead some people to litigate, but contend that this is not the primary reason for litigation over permanent partial awards. They think the size of permanent partial awards encourages litigation, not the inadequacy of income replacement benefits. The problem with the maximum income benefit is that it is simply inequitable to workers.

- **Some people think that the lack of a standard method for assessing disability, combined with the relatively large dollar amounts at stake, encourages litigation.**

  We mentioned earlier in this report how the lack of standard methods for disagnosing disability can result in the same patient getting different assessments from different doctors. The size of the awards at stake could encourage litigation when such differential assessments exist. For example, for a person receiving the maximum income replacement benefit in 1981, the difference between a 20 percent and a 40 percent impairment to the back is over $20,000.

CONCLUSIONS

Minnesota's workers' compensation system works well in 85-90 percent of the cases.

In approximately 76 percent of the cases workers who are injured receive adequate medical attention and return to work within three days of their injury. Similarly, in many of the cases where a worker cannot return to work within three days, he collects his income replacement benefit promptly and returns to work relatively quickly. In approximately 90 percent of the cases there is no litigation. The absence of litigation indicates that the system works adequately for employers and insurers in the vast majority of cases too.

Still, the 10-15 percent of the cases where Minnesota's system does not work well are very expensive for employers and debilitating and expensive for workers.

The 15 percent of lost time cases in Minnesota that involve claims of permanent partial disability account for approximately 41 percent of all the dollars spent in the system. Similarly, the claims of permanent total disability, which account for less than one percent of the cases, consume approximately 24 percent of the claim dollars.

These numbers do not, by themselves, reveal the failure in the Minnesota workers' compensation system. In any workers' compensation system cases of permanent disability are going to be the most expensive. To some extent this is appropriate, because the people with the greatest disability should get the most money.

The failure of Minnesota's system in these cases is that they too often involve extensive litigation, extensive use of an expensive medical system, and prolonged disability for workers. Minnesota has, for example, nearly 50 percent more litigation than Wisconsin, 20 times as many permanent total disability cases as Wisconsin, and a system whose medical costs have been rising at a rate of over 20 percent per year.

As a result of litigation, prolonged disability, and extensive use of the medical system, the workers' compensation system is more expensive than it should be for employers. Litigation means hiring and paying for attorneys. It also means employees cannot feel certain that if they are injured seriously they will promptly receive the benefits which law entitles them to. Prolonged disabilities mean employers must continue paying benefits and incur costs associated with losing experienced, productive employees and training new employees. Long disabilities also mean that employees may start to become dependent upon the workers' compensation system, become resentful of their employers, and lose contact with their fellow workers. This can be very debilitating for workers.

The benefit levels in Minnesota are not the problem. Benefit levels are not too high.

Minnesota's maximum income replacement benefit is 22 percent higher than the same benefit type in South Dakota, but Minnesota's is about the same as Wisconsin's and about 46.7 percent lower than Iowa's.

Minnesota's maximum permanent partial benefits are higher than those in Wisconsin and South Dakota, but lower than those in Iowa. Furthermore, the differences between Minnesota and Wisconsin, in terms of permanent partial awards is less than a comparison of the maximum benefits would suggest, because whereas most people in Minnesota do not receive the maximum benefit, nearly everyone injured in Wisconsin receives the maximum.

There are two general problems why the workers' compensation system fails.

The incentives in the system are either inadequate to promote the system's goals or actually encourage people to do things that are contrary to the goals.

The incentives for employers to prevent accidents and illnesses and hire injured workers are inadequate and unclear.

The vast majority of employers in Minnesota buy insurance for work place accidents and illnesses. This means that insurance companies, not employers, are actually writing out the checks to pay bills for work-related injuries or illnesses. The costs of these mishaps and the incentive to prevent them, are not as clear to employers as they would be if the employers were paying the bills directly.

It is true that the periodic payments some insured employers make as premiums reflect their safety experience. Over half the employers in the state, however, fail to qualify for any experience modification of their premium rates. Furthermore, even

those employers who do qualify do not see the benefits of safety immediately. Their safety performance this year, for example, will not be reflected in their rates until next year.

Also, insurance companies are typically relied upon to manage the claims that are filed by injured workers (to investigate the injury, decide whether to pay the benefits or deny the claim and prepare to litigate). Employers do not seem to understand the role they should play in managing the process after an injury has occurred. The financial rewards for early intervention and taking injured workers back can be demonstrated by loss control specialists. Most employers, however, either do not have or cannot afford such specialists. Considering the obstacles to taking back injured workers and the risks associated with a second injury, most employers seem to think it is easier and wiser to just tell their insurers to pay the workers' compensation benefits. Current penalty provisions are, however, inadequate to encourage sensitive, efficient claims handling.

Features in the benefit *structure* reward disability.

Workers' compensation insurance, by definition, pays benefits when workers are injured. Furthermore, the size of benefits varies based upon the extent of disability. This is as it should be. If one of the goals of the system is to encourage injured employers to return to work, however, great care must be taken not to make benefits so generous that injured workers are financially encouraged to prolong their disability. Minnesota has not, in our opinion, taken enough care in this regard. The benefit levels are not too high. In fact, we think they are appropriate. Certain features of the benefit structure here, however, make benefits too generous for some workers, rewarding those who prolong their disability and penalizing those workers who make a conscientious effort to return to work.

There are five features of the benefit structure that are of significant concern to us. These are:

- The right of workers to receive concurrently, income replacement benefits and permanent partial disability benefits that, by themselves, would adequately replace the lost income for most workers.

- The supplementary benefits given automatically after 104 weeks of disability, so that no one gets less than 65 percent of the statewide average weekly wage.

- The right of minors to automatically receive the maximum income replacement benefit, regardless of their pre-injury wage.

- The effect of the minimum benefit on low wage earners.

- The bonus for participating in retraining, as compared to other forms of rehabilitation.

The ability to receive relatively large permanent partial benefits concurrently with temporary income replacement benefits, both of which alone are adequate by national standards, has the effect of rewarding people who stay out of work and penalizing people who return to work. Giving supplementary benefits to some workers, which raises their workers' compensation benefits well over 100 percent of what they would be earning working, has the same effect.

Giving minors with permanent partial disabilities the maximum temporary total income replacement benefit automatically, is also likely to make it difficult to encourage them to return to work. It certainly seems appropriate to give the maximum income benefit to young people who incur permanent injury and are never expected to return to work. A benefit based upon a minor's pre-injury wage, which undoubtedly is much lower than his potential wage, would be very unfair. Still, giving the maximum benefit to someone who earns well below that amount working, and who could return to work, surely discourages that person from doing so.

The minimum benefit provision also seems to us to put in place disincentives to return to work. This is especially true for someone who is the second income in the family, working part-time. To pay such a person 100 percent of his gross wage means, in most cases that he will make more on workers' compensation than he took home working. This should be changed. We remain concerned about a person who is making a very low income who becomes totally disabled, who is his own sole source of support. What we want to prevent is the windfall that could go to a person working part-time, who really does not need the workers' compensation benefits to sustain his normal lifestyle. We think something should be done to eliminate these cases without reducing the benefits to injured workers who really need the money.

It also seems unwise to us to provide a 25 percent bonus for participating in retraining programs as compared to other rehabilitation programs. Retraining is likely to be the longest and most expensive form of rehabilitation, and there is no evidence that it is more effective at returning people to work. In fact, retraining may be inappropriate or unnecessary for older workers. They should not be encouraged into a retraining program simply because of the benefit structure.

As should be clear from the preceeding paragraphs, we are primarily concerned about situations in which the benefit structure makes it possible to combine benefit types, or where special considerations are made for certain groups of people, such as minors. We do not think there is a problem with basing income replacement benefits on gross wages and making them tax free. Even though this means Minnesota replaces over 80 percent of take home pay for all but the highest paid employees, we believe most workers still have other non-financial incentives to return to work. We also think the escalation of benefits is appro-

priate. We think workers' benefits should be protected from the effects of inflation. We are concerned though, about the combination of two types of escalators (the six percent escalator and the supplemental benefit). Giving both benefits is redundant, and can have the effect of giving some people more in workers' compensation benefits than they could earn working. Our basic position on benefits is that they should replace almost all, but not more than an injured worker's pre-injury take home pay.

We remain concerned about the effect of the open-ended nature of eligibility. We are most concerned about this feature, to the extent that it permits workers to collect permanent partial benefits and income replacement benefits concurrently. This combination undoubtedly discourages return to work. We would still be concerned though, even if concurrent receipt of benefits were prohibited. Open-ended eligibility encourages workers to gradually develop a dependency upon workers' compensation benefits. They may start to think of themselves as claimants instead of workers. This is not a healthy situation. There needs to be some way of helping workers become independent of the workers' compensation system, not only because of the incentives it implies for return to work, and the psychological effect it has on workers, but because of the adversarial relationship that can develop in extended cases between employers, insurers and claimants.

There are practically no financial incentives in the system to control medical costs or provide efficient services.

Medical providers (doctors, chiropractors, psychologists and others) are guaranteed 100 percent reimbursement for their services, regardless of their cost or effectiveness. Doctors, for example, have no real incentive to call upon psychologists or rehabilitation professionals early in the treatment. This can be especially debilitating to workers with back injuries. In fact, the threat of future litigation acts as an incentive for doctors either to refuse to treat workers' compensation cases altogether, or to overtreat those they do see.

Workers have no incentive to choose efficient providers. They have 100 percent free choice of provider, with no co-payment obligations anywhere.

There are a number of incentives to litigate.

Uncertainty among employers and insurers about when they can legally discontinue paying benefits, and about the authority of the rehabilitation review panel, leads to some litigation. In addition, the size of permanent partial awards, uncertainty surrounding the impairment ratings a worker will get from a doctor (especially workers with back injuries), the ability to buy opinions from some doctors, and the reputation judges have for being liberal in favor of workers, are all factors that undoubtedly encourage some employers and employees to litigate. Under these conditions, workers who find their temporary total disability benefits inadequate are especially likely to litigate.

The second general reason for the failure in the system is that there are a number of legal and administrative shortcomings which act as obstacles to an affordable, effective and fair system.

Confusion over the law.

People do not agree on what the law says, what the Legislature intended it to mean, or what their rights and responsibilities under the law are. It is almost essential for anyone with a workers' compensation dispute to hire an attorney. This can add to the cost of the system and encourage litigation, delaying payment of benefits to workers.

Delays in litigation.

One administrative practice that delays litigation is the need for judges to collect evidence about attorney's fees. This delays the completion of cases and adds to the cost of the system. Some of these costs are paid by employers, but some are also paid by the taxpayers of the state, considering that the Office of Administrative Hearings, and the Workers' Compensation Court of Appeals, the two main forums for litigation, are financed out of the state general fund.

Another factor that delays litigation is the need for doctors to appear to give testimony on medical evidence. It takes a relatively long period of time for doctors to clear their schedules to attend hearings. It is expensive, and it appears unnecessary. Most cases can be handled with the medical evidence submitted in written form.

The difficulty associated with diagnosing back injuries.

The workers' compensation system does not deal very effectively with back injuries. It is difficult to diagnose them accurately and quickly. Moreover, doctors are not required to use the same diagnostic or rating techniques. Furthermore, treatment of the physical conditions without considering emotional, psychological, and vocational factors is often ineffective.

Much litigation occurs over back injuries. This is a very serious problem, considering that approximately 40 percent of all work related injuries involve the back or other areas of the trunk. We suspect that many of the cases of alleged malingering could be the result of a system that creates disability by failing to respond to back injuries in a timely, appropriate, and understanding manner.

The limited knowledge on the part of employers regarding accident prevention and loss control.

Employers miss opportunities to control their workers' compensation costs because they do not understand the value of preventing injuries or taking action to control losses once injuries are incurred. Delays in reporting injuries to insurers means delays in the receipt of benefits, which leads some workers to litigation.

The ineffectiveness of penalties regarding promptness of payment.

Current monitoring practices and the penalties for delays in payments of benefits to injured workers do not seem adequate to insure prompt payment of benefits and certainty among workers. Worker representatives complain strongly about delays in payments.

Seniority rules.

These rules sometimes make it difficult for employers to return injured employees to work, adding costs to the system for employers and employees.

The political controversy surrounding the topic of workers' compensation.

The politically charged atmosphere surrounding workers' compensation is not conducive to an effective system. The politics seem to have fostered adversarial relationships between workers and employers. Many competent lawyers and medical providers have been driven away from the system.

The liability of employers for portions of disability that are caused by non-work accidents.

We think it is unfair to employers to expect them to pay for the portion of a worker's disability that is due to a non-work accident. Furthermore, it adds expense to the system.

The calculation of permanent partial awards based upon pre-injury wage.

This feature of the benefit structure is unfair to workers to the extent that it gives different awards to workers with the same impairment. In so far as permanent partial awards are intended to compensate people for impairment *per se*, people with the same impairment should get the same awards. In so far as permanent partial awards are intended to compensate people for lost earning capacity, the awards should reflect pre-injury wage or actual lost earnings.

The limited maximum income replacement benefit.

We think it is unfair to provide employees who make relatively high incomes with workers' compensation benefits that replace significantly less of their incomes than do the benefits to lower paid employees.

The limited health care coverage for the families of injured workers.

We also think it is unfair to discontinue the health care coverage for the families of injured workers.

The delay in the deduction of workers' compensation benefits, when workers receive social security benefits.

It seems to us unnecessarily expensive to delay, until a worker has received $25,000 in workers' compensation benefits, the consideration of social security benefits employees may be receiving in addition to workers' compensation benefits. If Minnesota does not deduct workers' compensation benefits the social security administration will deduct social security benefits. Therefore, if Minnesota were to immediately deduct workers' compensation benefits it would make very little difference to employees in terms of the size of their total benefit. Delaying the deduction simply means Minnesota employers pay more than they would otherwise have to. Similarly, it is unnecessarily expensive for employers to pay 'supplemental benefits' when the provision of social security benefits have reduced the workers' compensation benefit to below 65 percent of the statewide average weekly wage.

SUMMARY OF RECOMMENDATIONS

To make the workers' compensation system work better existing incentives must be changed or new incentives added, which will do the following:

- Give employers clear and significant incentives to prevent injuries and illnesses and take injured workers back to work.
- Reward employees for returning to work, not for being disabled.
- Encourage medical cost control, while promoting quality medical service.
- Discourage unnecessary litigation, without preventing litigation in cases of unresolvable disputes.

In addition, the legal, administrative, and political obstacles to an affordable, effective, and fair workers' compensation system must be removed or reduced.

- Confusion over the law needs to be reduced.
- The delays involved in litigation must be reduced.
- The system must deal more effectively with back injuries.
- Knowledge on the part of employers regarding loss prevention and loss control must be increased.
- Seniority rules should be altered to make it easier to rehire injured workers.
- The groups with a stake in the workers' compensation system must try harder to work together to accomplish mutually agreeable solutions to their problems.
- Features in the benefit structure which are unfair to employers or workers should be removed or changed.

RECOMMENDATIONS

The Legislature should adopt a new method for paying permanent partial disability benefits, principally to encourage employers to return employees to work, and reward employees for going back to work.

Under the new method the size of a permanent partial award should depend upon whether the employer makes the employee a bonafide job offer. Furthermore, the employee's receipt of an award in a lump sum should depend upon whether the employee goes back to work.

The method we recommend should work basically as follows:

In cases where the employer has made the employee a bonafide job offer any time before the end of the employee's rehabilitation plan, the employee would be entitled to a relatively limited 'impairment award' and his temporary total disability benefits would be discontinued. If the employee accepts the employer's job offer the employer could collect the impairment award in a lump sum. If the employee refuses the job he would collect his impairment benefit on a weekly basis until it ran out or until he found another job on his own, whichever comes first. If the employee found another job he could collect the present value of any remaining portion of the impairment award in a lump sum 30 days after working at this new job.

In cases where, upon completion of the employee's rehabilitation plan, the employer still has not made the employee a bonafide job offer the employee would receive a 'permanent partial award' significantly larger than the impairment award paid in cases where the job offer is made. In such cases the employee's temporary total benefits would be discontinued, and the employee would receive his permanent partial award on a weekly basis until it runs out or until he found another job on his own, whichever comes first. If the employee found another job, he could collect the present value of any remaining portion of the permanent partial award in a lump sum 30 days after working at the new job.

The Discussion of Recommendations section of this report describes in detail what we mean here by a bonafide job offer. Generally, it could be the employee's old job or another job with either the old employer or a new employer. The most significant feature of a bonafide job offer, however, is that it pays at least 85 percent of the worker's pre-injury wage.

In cases where the employer offers the employee a job, but the wage is not 85 percent of the pre-injury wage, the employee would be entitled to a relatively limited impairment award plus a temporary partial benefit equal to the difference between the amount the employee was making at the time of injury and the wage upon his return to work. He would be eligible to receive this benefit for the rest of his life or until his working wage equaled the escalated value of his pre-injury wage.

In order to add further incentives for employers to prevent accidents and control losses when accidents do occur, the Legislature should:

Remove the existing requirement that, in cases of second injuries, employers pay for the first 50 weeks of disability and first $2,000 of medical expenses.

Require insurance carriers to offer employers the right to a deductible for the first two weeks of lost time benefits.

Increase to $250 the fine levied against employers who fail to inform insurers within the statutorily prescribed time that an injury has occurred, and reduce the required time limit to three days following the third day of lost time.

Provide tax credits to employers who hire injured workers.

In order to insure that Minnesota replaces most but not all take home pay for injured workers, and to make the benefits more equitable, the Legislature should:

Eliminate supplementary benefits for all workers who qualify for benefit escalation.

Eliminate the practice of automatically giving all minors with permanent partial disabilities the maximum temporary total income replacement benefit, but continue giving the maximum to those minors who are permanently and totally disabled.

Eliminate the extra 25 percent of temporary total benefits given to workers who participate in retraining programs as compared to other kinds of rehabilitation.

Change the minimum benefit so that employees making below 50 percent of the statewide average weekly wage and who are

their own sole source of support receive, if injured, 100 percent of their take home pay. Other wage earners, who used to qualify for the minimum benefit, should get 66 2/3 of the gross pre-injury wage.

Raise the maximum temporary total income replacement benefit to 150 percent of the statewide average weekly wage.

As a step toward encouraging medical cost control along with quality medical service, the Legislature should:

Commission a study of ways the workers' compensation system could benefit from the efforts now being made in the community to control health care costs generally.

A number of steps are being taken in the community now, by health insurers, hospitals, doctors, health maintenance organizations, employers and others, to control health care costs while providing quality medical care. Sometimes these steps involve requiring employees to pay part of the cost of medical care to encourage them to shop for efficient providers or take only as much health insurance coverage as they need. Sometimes the steps involve giving choices to consumers of health care in terms of price and coverage. For example, 100 percent coverage might be offered if certain preferred providers are selected, whereas co-payments are required if other providers are used. Sometimes the steps involve pre-payment of medical bills, intended to encourage providers to be efficient.

The Legislature has recently taken action to promote these efforts to control health costs, by requiring health care providers and hospitals to disclose their prices and by encouraging consumers to shop wisely among providers and hospitals. We recommend that the Legislature commission a special study of how the workers' compensation system could benefit from these and other cost control strategies.

The study should consider those steps being taken already to control health care costs generally. It should also give special attention to the idea of making health care insurance the primary policy in all cases of injuries to employees. As we have discussed this idea, it would mean that employees injured on the job would go to the same health care provider they would go to if injured in a non-work related accident. The employer's health insurance carriers instead of the workers' compensation carrier would pay all medical bills. There would be 100 percent coverage for employees, but his choices among providers would be determined just the way they are now for his regular health insurance.

Repeal the portion of the existing statute which would limit the charges by medical providers.

Limiting the charges of medical providers is not an effective way to control health care costs. In fact, it is very likely to cause much more money to be spent on health care, for it will likely drive away the efficient providers who charge more than the 75th percentile but work efficiently, and it would still permit the inefficient providers to extend treatment long enough to recover any revenue lost due to restrictions on charges for single procedures. Furthermore, it unfairly restricts the choices of workers among health care providers.

In order to discourage unnecessary litigation, without preventing litigation in cases of unresolvable disputes, the Legislature should:

Require medical providers to use a standard method of diagnosing workers' compensation patients and rating their degree of impairment.

This should reduce the disparity in ratings of impairment and the uncertainty about ratings that now contribute to litigation.

The standard method should be outlined in a guide such as the American Medical Association's guide to the Determination of Permanent Partial Impairment. The Legislature should permit the Commissioner of Labor and Industry to select or develop the appropriate guide, based upon consultation with the people involved in the workers' compensation system.

Establish a separate method and schedule for determining permanent partial awards in cases of back injuries.

A panel of medical doctors who specialize in treating back injuries should be asked to establish a guide which clarifies the characteristics of the three or four most common types of back conditions. These conditions might be described as: 1) strain/sprain, 2) fracture/dislocation, 3) disc/herniation.

The guide should also describe the recommended treatment for each type of condition, the type of disability a person with each condition could be expected to have to live with for the rest of his life, and the type of work limitations the person would have (light, moderate, or extreme, for example).

In any case, each of the conditions should be considered a category into which workers with that condition would be placed. A fourth category could be added for workers who complain of back pain but where no objective findings of impairment exist. A fixed rating of permanent partial disability would be stipulated for each type of condition, with the size varying according to assessment of work limitations. There would be no need to calculate a rating of impairment. A judge, for example, could simply look at the doctor's judgment about the condition of the worker, and then refer to the guide to find the appropriate rating. Use of this guide should reduce litigation, because doctors do not generally disagree on the type of condition a person has, they simply disagree on the extent of disability this

condition causes.

Appoint a special expert to recodify, clarify and simplify the existing statute, eliminating ambiguities and inconsistencies with case law.

The Legislature should appoint an advisory commission for the special expert in charge of recodification, consisting of highly respected people currently involved in the workers' compensation system, including members of the bar, the bench, employer and employee groups, and insurers.

Encourage the Commissioner of Labor and Industry to use the rule-making authority he has, or expand this authority where necessary, to clarify the law and establish guidelines for interpreting the law.

Examples of where action may be needed include, interpretation of permanent partial schedules, or interpretation of how the social security offset provisions should be applied.

The commissioner should consult with attorneys, employers, insurers, and others in the workers' compensation system to identify additional issues where clarification is needed.

The following steps should be taken to overcome the legal, administrative, and political shortcomings in the system:

To reduce the uncertainty among workers about what will happen to them if they are injured, the following steps should be taken:

- The Department of Labor and Industry should sponsor several seminars throughout each year on workers' compensation matters. These seminars should be directed at employers and employees and cover all aspects of workers' compensation.

- The Department of Labor and Industry should establish a toll free number which people can call for information about the workers' compensation system.

- Employers should establish procedures for contacting workers within three days of hearing of a lost time injury, to assure employees that they have insurance and will be protected, and that their employer will do everything possible to bring the employee back to work.

To reduce the delays associated with settling cases which are litigated the following steps should be taken:

- The Legislature should change existing laws to provide that attorney's fees be set as a percentage of the amount of the award in dispute. Judges should not have to gather evidence about fees unless those fees are contested. Fees should be limited to the dollar amount currently in effect. This maximum should be escalated to reflect inflation. Fees should be appealable.

- The Legislature should change existing law to provide that judges take medical testimony by report. Cross examinations should be done by deposition. Furthermore, judges should be the only officials permitted to require medical providers to appear at trials.

To encourage more effective treatment of back problems, and to generally encourage faster rehabilitation and return to work, the following steps should be taken:

- The Legislature should require that a rehabilitation review be conducted upon 45 days of lost time in cases of back injuries and within 90 days of lost time in cases involving any other injury, to determine if and when rehabilitation should begin. This review could be done by anyone the employer deems qualified.

To increase the knowledge of employers regarding accident prevention and loss control, the following steps should be taken:

- The Department of Labor and Industry should sponsor seminars throughout the year for employers and insurance companies regarding these topics.

- The Legislature should provide the Department of Labor and Industry with sufficient funding to permit OSHA officials to substantially expand the program of giving employers free consultation on accident prevention and loss control when employers request it.

- Community colleges and AVTIs should offer courses in accident prevention and loss control.

- Private entrepreneurs should develop services for employers in these areas.

Unions and employers should re-examine their seniority policies with the objective of making it as easy as possible for employers to return injured workers to light duty assignments.

In an effort to get the stakeholders in the system to work together cooperatively, the Legislature should make a commitment to rely heavily upon the Workers' Compensation Advisory Commission for recommendations on legislation.

The Advisory Commission should be broadened to include all the major stakeholders in the system.

In order to reduce the inequities and unnecessary expenses that result from the benefit structure, the following changes should

be made:

- The Legislature should remove the requirement in existing statutes that make employers obligated for portions of disability that are not work-related.

- The Legislature should pass a new provision providing that workers' compensation benefits would be reduced $1 for every dollar a worker receives in social security benefits or for each dollar an employer contributes to a private pension plan.

  The basic objective in this recommendation is to permit Minnesota employers to get the full benefit of federal social security payments to workers, without unnecessarily reducing workers benefits.

- The Legislature should require employers to continue the health care coverage for the families of injured workers, while those workers are collecting workers' compensation benefits.

To generally improve the administration of the workers' compensation system, the Commissioner of Labor and Industry should consider the following:

- Establishing a research division within the Department, to analyze how the law is working, and assess the impact of recent and proposed changes in the law.

- Establishing a 'promptness of payment report', similar to the one in Wisconsin, which informs insurers and the public how well insurers are doing at getting benefits to workers quickly.

DISCUSSION OF RECOMMENDATIONS

How exactly, would the committee's new method for paying permanent partial disability benefits work? For example:

What would happen if an employee was injured but no permanent physical impairment was incurred?

In such a case the same conditions would apply under our plan as apply today. The worker would receive temporary total disability benefits until he returned to work. Some workers would receive higher benefits under our plan, because we would raise the maximum temporary total disability benefit to 150 percent of the statewide average weekly wage.

What would happen if an employee incurred a permanent impairment, but was eventually able to return to work at little or no loss of wage?

This employee would receive temporary total income replacement benefits until he reached the end of any rehabilitation program. At this point, the employee would become eligible for either an 'impairment award' or a larger 'permanent partial award', depending upon whether the employer offered the employee a job. If the job was offered, the employee would get the impairment award. If no job was offered the employee would get the permanent partial award. In either case, the worker's temporary total benefits would be discontinued.

If a job was offered and the employee took the job, he would collect the impairment benefit in a lump sum. If he did not take the job he would start to collect the impairment award in weekly installments, and would do so until it ran out or until he found a job on his own.

If no job was offered, the worker would start to collect the permanent partial award in weekly installments, and would do so until it ran out or until he found a job on his own.

As soon as the worker found a job on his own, he could collect the present value of any remaining impairment or permanent partial award in a lump sum 30 days after working at that new job.

What would happen if the employee incurred a permanent partial impairment, was able to return to work, but experienced significant wage loss upon his return, compared to what he was making before being injured?

In such cases, and where the employer offered the employee a job, the employee would be entitled to an impairment award, plus a temporary partial income replacement benefit to cover 66 2/3 percent of the difference between his new wage and his pre-injury wage. He would be entitled to receive this temporary partial award for the rest of his life or until his new wage equalled the escalated value of two-thirds of his pre-injury wage.

If no job was offered, the employee would receive the permanent partial award. In either case, the employee would have to return to work to collect his award in a lump sum.

What would happen if the employee returned to work, but later found that he could not work after all, and had to quit because of physical limitations?

In such a case the employee would have received an impairment award upon returning to work. He may or may not also have been receiving a temporary partial income replacement benefit. If after working for a while, he aggravated his injury he would be able to reopen his case, just as is his right today. He may be entitled to additional temporary total impairment, permanent partial, or permanent total income replacement benefits.

What would happen if the employee was injured so severely that he could never be expected to return to work?

In such a case the employee would receive an impairment award, plus a permanent total income replacement benefit, paid weekly the rest of the employee's life or until he returned to work.

What kind of job would the employer have to offer an employee in order to qualify to pay the limited impairment award, rather than the higher permanent partial award?

We think the definition of a bonafide job offer should be clearly written in statute to avoid disputes. A definition could look something like the following:

- The physical requirements are within the employee's abilities at the time the job offer is made.

  A qualified rehabilitation consultant should conduct an on-

site analysis which should be submitted to a physician for approval that the employee can do the work.

- The pay is at least 85 percent of the employee's pre-injury hourly rate.

  It is important that an hourly rate be used in order to allow for employees to return to work on a graduated work schedule.

- Fringe benefits equal to those of other workers in that wage classification be provided.

- At least 50 percent of the tasks are usual and customary for the employer.

  In other words, the job should not be a 'make work job.'

- The employee performs the job satisfactorily for at least 30 days.

What would happen if the employer offered the employee a job, which later turned out to be just a 'make work' assignment, created just so the employer could get out of paying the larger permanent partial award?

Under conditions in which it can be shown that the employer did not offer the job in good faith, a substantial fine should be levied against the employer. Make work jobs, where the tasks are not customarily needed by the employer would not, by our definition, qualify as a bonafide job offer. In such cases the employer would be liable for the larger permanent partial award.

What would happen if the employer offered the employee a new job, but soon after the employee started work, the employee had to be laid off by the employer in a general work slow down?

In such cases the employee would already have received his impairment award. He might also have been receiving a temporary partial benefit. Upon being laid off, he would also be entitled to receive a weekly benefit for a number of weeks equal to the difference between the larger permanent partial and the smaller impairment award, minus the value of weeks actually worked.

What would happen if the employer wanted to offer the employee a job, but was prevented from doing so by a collective bargaining agreement with a union?

In such cases the employer would be exempted from paying the larger permanent partial award, and would only have to pay the relatively limited impairment award.

How would the committee calculate the impairment and permanent partial awards under its new plan?

The impairment award would be the value of the whole body (which would be set by the Legislature and divided among each of the body members), adjusted to reflect the employees degree of impairment. If, for example, an employee incurred a 10 percent permanent disability to his foot, and the Legislature had set the value of the foot as $100 per week for 165 weeks, then the employee would be entitled to an impairment award equal to:

$100 x 165 weeks x 10% = $1,650

The permanent partial award would be calculated as a percent of the worker's pre-injury wage, up to a maximum dollar amount, just as permanent partial awards are calculated today. (We think the maximum currently used, 100 percent of the SAWW, should continue to apply in permanent partial cases.) Today, the award would be, for example, 66 2/3 percent of the pre-injury wage (up to $290), times the number of weeks in the schedule, times the employee's degree of impairment. If, for example, the employee were making $290 per week (the average weekly wage in most of 1982) and he incurred a 10 percent disability to the foot, his award would be calculated as follows:

$193 x 165 weeks x 10% = $3,184

The numbers we have used here for the value of the foot were selected only to illustrate how the calculations of awards would be made. The Legislature should set in statute the actual numbers that should be used for this and other permanent partial impairments. We are not recommending that the Legislature necessarily select our numbers. We do recommend that the numbers be set in such a way that employers have a substantial incentive to return employees to work, and that employees do not have an incentive to prolong their disability.

What does the committee consider the primary advantages and disadvantages of its new method for paying permanent partial awards?

From the point of view of employees, the new system has the following advantages:

- It provides substantial protection against ever being without income as a result of being cutoff by the employer when a dispute arises.

  Today, employers sometimes discontinue paying an employee income replacement benefits when they believe the employee is able to go back to work. Employees complain bitterly about this, for it can leave them with no income in a time when they believe they are unable to work. It can be very time consuming and expensive for them, and for the system generally, to try to recover benefits that have been discontinued. Often this involves litigation.

Under our system an employer might still discontinue paying income replacement benefits, but he would continue sending checks; the checks would simply be installment payments for the impairment award. The employee, if he felt he was cutoff unfairly, could try to recover his benefits and would still have some income coming in.

- It provides compensation for impairment *per se.*

  Our system provides benefits to workers for lost members or loss of use of members, as the current system does. We believe our system also improves upon the current system by giving equal impairment awards to employees with the same injury.

- The size of the permanent partial award is larger if the employee experiences lost earning capacity.

- Workers can get substantial cash awards in lump sum, if they return to work.

From the standpoint of employers, the new plan has the following advantages:

- Their responsibility to pay income replacement benefits ends when they find a job for the employee, or at the end of the employee's rehabilitation.

- The employer can save substantial sums of money if he finds the employee a job. In such cases he pays only for impairment and not for future lost earning capacity.

- In cases where lost earning occurs, because the employer cannot find the employee a job, the employer will pay only once for the employee's lost earning capacity, not twice as he would today.

  One disadvantage for small employers is that they may not be as able as large employers to find new jobs for injured workers. Our plan, however, does permit small employers to ask other employers, who may have jobs, to hire the injured workers. Perhaps, consideration could also be given to modifying the rehabilitation system to assist small employers and insurers to find suitable employment opportunities for workers.

Considering the committee's findings regarding the inequities associated with income replacement benefits, why didn't the committee recommend a remedy?

We recognize that workers with the same income loss do not necessarily get the same income replacement benefits. We think the inequities are relatively minor, however, and would be complicated to correct. We were more concerned about the effects of the benefit structure on incentives for employees to return to work. We believe that our recommendations regarding permanent partial benefits, supplementary benefits, minors benefits, the minimum benefit, and retraining benefits should remove the rewards for prolonging disability and make it easier for employers to encourage employees to return to work.

Why does the committee think Minnesota employers should compensate injured workers for impairment if there is no loss of income as a result of impairment?

Employees who experience permanent partial impairment as a result of a work-related injury may experience disabilities at work, but they would also experience disabilities outside of work. Such employees are likely to be affected psychologically and socially for a time, also economically. If a person loses his hand, for example, he would no longer be able to mow his own lawn or shovel his own sidewalk. To get these chores done he might have to pay others to do them, thereby incurring expenses he never incurred before being injured. As a result, it seems to us only fair to compensate people for these non-work related disabilities as well as the actual wage related disabilities. Our proposed system for paying impairment and permanent partial awards does this.

Considering the leadership role the Citizens League has taken in the community's effort to control health care costs, and considering the committee's findings regarding the limited incentives for health care cost control in the workers' compensation system, why was the committee reluctant to recommend adopting now the cost control strategies the committee recommends for further study?

We fully recognize the efforts in the community to control health care costs. Furthermore, we are aware that incentives are needed to control health care costs in the workers' compensation system. These costs have been going up too rapidly in recent years. Furthermore, the possibility exists that workers' compensation related health care costs will go up even faster in the future as pressure builds on providers to control health care costs generally and the temptation builds to recover revenue from workers' compensation cases which may be lost from non-work related costs.

There are, however, basically three reasons we cannot yet recommend that the kinds of market incentives being applied to control health care costs generally be applied to workers' compensation now. First, we think employers should pay 100 percent of the cost of medical care for injured workers and that workers should have 100 percent free choice of medical providers. Yet the cost control strategies being applied in the community now usually involve a co-payment obligation or a limitation of choice for employees, or both.

Secondly, we think workers' compensation related health costs

can be reduced without limiting the choices of workers or the amount of their coverage. The use of a standard method of diagnosing injuries should, for example, reduce disparities in diagnoses, and thereby reduce the need for additional medical opinions and the tendency of people to 'doctor shop'. Similarly, the separate schedule for permanent partial awards for back injuries should reduce litigation over these injuries and the need for medical testimony. Giving judges exclusive right to require personal appearances in court by physicians should save money as well. Finally, our recommendation for a mandatory rehabilitation review should reduce the likelihood of doctors overtreating patients.

Thirdly, we are not sure what the impact would be of incorporating into workers' compensation the kinds of market strategies to cost control now being applied in health care generally. We are concerned about the possibility that medical carriers may not be as sensitive to the rehabilitation needs of injured workers as long-term disability carriers now are.

Also, the possibility exists that incorporating workers' compensation benefits into the medical insurance system would put pressure on employers to increase their medical coverage for non-work related cases.

In summary, while we recognize the need for cost control incentives, we think some money can be saved with the changes we have recommended in administration of the system and we are not sure what the impact would be (especially on choices and coverage for workers) of immediately incorporating cost control strategies into the workers' compensation system.

One possible change, that would probably help reduce costs in the medical portion of workers' compensation and preserve for workers 100 percent free choice of providers and 100 percent coverage of all expenses, would be to simply make health insurance carriers responsible for all injuries, regardless of whether they are work related.

Seventy years ago, roughly, when workers' compensation laws were first adopted, employers did not commonly provide health insurance for employees. It was, therefore, appropriate for the workers' compensation system to include medical insurance. Now that medical coverage for employees for non-work related accidents is practially universal, it makes sense to question whether a separate system of medical insurance for work-related injuries is required. This is especially so, considering the extreme problems we have found in the medical portion of the workers' compensation system.

We were tempted to recommend that health insurance be made primary in all cases of accidents, but two issues compelled us to recommend study of it, and other cost control strategies, instead. First, we are concerned that medical carriers might not be as sensitive as long-term disability carriers, to the rehabilitation needs of injured workers. Secondly, we believe that the cost of products should reflect the costs of work place accidents incurred during the production of those products. We are concerned that if health insurance were made primary in all cases, the medical costs of work place accidents would be spread over all employers and would not be borne by those employers who experience the injuries.

Therefore, when the Legislature develops the charge for the study of how to control workers' compensation health care costs, it should include a requirement that the study commission outline the advantages and disadvantages of having a separate system of medical insurance for work place accidents, and decide whether such a system should be continued.

Furthermore, in the meantime, the Commissioner of Labor and Industry should also solicit support from labor and management officials to try demonstrations of various health care cost control strategies in workers' compensation cases. Specifically, attempts should be made to identify places where workers and employers are willing to try adopting prepaid arrangements for workers' compensation health care or to have workers use 'preferred' medical care providers.

Frequently, when the community is trying to solve its problems and change the way it does things it tries demonstration projects, rather than making massive changes all at once. Our recommendation for demonstrations in the health care portion of the workers' compensation system are made with this in mind.

Did the committee take a position of whether Minnesota should establish a state workers' compensation insurance fund?

No. We considered briefly the idea of establishing a state fund, but did not have time to thoroughly research and debate the idea. There seems to be significant divergence of opinions on this issue. It also seems to us to be a very complicated issue. The political rhetoric involved in the debate makes the issue even more difficult to understand. Based upon our very limited review of the state fund idea, we decided we could not take a position in support of establishing a state fund, but we could also not come out against the idea. We simply decided not to take a position on this issue at this time.

CL RECOMMENDATION TO CHANGE METHOD OF PAYING PERMANENT PARTIAL BENEFITS

CL RECOMMENDATION

Employee incurs permanent injury. → Employee recuperates; collects TT benefits. →

a. At some time before the end of rehabilitation, employee is offered job at 85% of pre-injury wage. → Employee becomes eligible for a relatively small impairment award. TT is discontinued.

(Impairment award = dollar per week for member times number of weeks in schedule times percent impairment.) → If employee takes job he collects impairment in lump sum.

If employee refuses job, he collects impairment award weekly, until it runs out or he finds a job on his own.

b. Employee is offered a job, but at less than 85% of pre-injury wage. → Employee becomes eligible for impairment award plus TP benefit. TT is discontinued.

(TP = 85% of pre-injury wage - new wage.) → If employee takes job he collects impairment in lump sum and TP weekly. If employee refuses job he collects impairment and TP weekly until it runs out, or he finds a job on his own.

c. At end of rehabilitation, employee has still not been offered a job at 85% pre-injury wage. → Employee becomes eligible for a relatively larger PP award for future lost earning capacity. TT is discontinued.

(PP = 66 2/3 of pre-injury wage times number of weeks in schedule times percent of impairment.) → If employee never returns to work he collects PP weekly until it runs out.

If employee finds job on his own, he may collect present value of remaining PP in a lump sum.

CURRENT METHOD

Employee incurs PP injury. → Employee recuperates; collects TT. → Employee becomes eligible for a relatively large PP award; TT continues.

(PP = 66 2/3 of pre-injury wage times number of weeks in schedule times percent of impairment. → If employee returns to work, employee collects PP in lump sum and TT is discontinued. If employee completes rehabilitation and can't find a job, retires, or is declared PT, he collects PP award in lump sum and TT continues; if employee is offered a job and refuses it, he collects PP weekly and TT is discontinued.

MMI = Maximum Medical Improvement TT = Temporary Total PP = Permanent Partial TP = Temporary Partial PT = Permanent Total

FOOTNOTES

[1]*Workers' Compensation in Minnesota: An Analysis with Recommendations,* Prepared by Minnesota Insurance Division, January, 1982, p. 21.

[2]Workers' Compensation Reinsurance Association records.

[3]Minnesota Department of Labor and Industry.

[4]Workers' Compensation Insurance Rating Association of Minnesota.

[5] Op.cit., footnote 1, p. 134.

[6]Testimony to CL committee, Michael Markman, June 22, 1982.

[7] Op.cit., footnote 1, p. 118.

[8]Op.cit., footnote 1, p. 101.

[9]*Litigation in Workers' Compensation: A Report to the Industry,* California Workers' Compensation Institute, p. 3.

[10]Testimony to CL committee, Dr. John Dowdle, July 20, 1982.

[11]Testimony to CL staff by National Council on Compensation Insurance staff.

[12]Insurance Commissioner's rate order of April 21, 1981.

[13]Memo by Rick Lutinski, Minnesota Insurance Division, *Loss Reserving & Premium Dollar Flow in Workers' Compensation Insurance.*

[14]Testimony to CL committee, Dr. Loren Pilling, July 13, 1982.

[15] Testimony to CL committee, Ken Martyn, September 28, 1982.

[16]Testimony to CL committee, Anne Clayton, September 21, 1982.

[17] Testimony to CL committee, Phil Haber, July 13, 1982.

[18]MN Statutes, Chapter 176.131, sub. 1.

[19]*Social Security Bulletin,* September 1982, Vol. 45., No. 9.

[20]Testimony to CL staff, Hugh Russell, October 1, 1982.

[21]MN Statutes, Chapter 176.021, sub. 3a.

[22]MN Statutes, Chapter 176.011, sub. 18.

[23]MN Statutes, Chapter 176.645, sub. 1 and 2.

[24]MN Statutes, Chapter 176.132, sub. 1, 2, and 2 a.

[25] MN Statutes, Chapter 176.101, sub. 6.

[26]MN Statutes, Chapter 176.101, sub. 2.

[27] Op.cit., footnote 1, p. 119.

[28]MN Statutes, Chapter 176.102, sub. 11.

[29]MN Statutes, Chapter 176.101, sub. 3.

[30]MN Statutes, Chapter 176.101, sub. 3, sections 41 and 49.

[31]MN Statutes, Chapter 176.101, sub. 3, section 46.

[32]MN Statutes, Chapter 176.101, sub. 4.

WORK OF THE COMMITTEE

COMMITTEE CHARGE

The Citizens League Board of Directors assigned the committee the following charge:

> Minnesota's system for compensating injured workers has become a subject of major controversy. This panel should try to help resolve the controversy by recommending changes in the system which provide fair compensation, reduce its costs and improve its effectiveness.
>
> In the process of its work the panel should investigate how the following aspects of the workers' compensation system affect its cost and effectiveness:
>
> - The claims management process.
> - Insurance practices and policies.
> - Litigation and attorney involvement in the system.
> - Medical costs and payment policies.
> - The structure of benefits to workers, workers' spouses, and dependents.
> - The experiences of workers who are off the job collecting workers' compensation benefits.
> - Methods of getting injured workers back to work, including rehabilitation.
> - The role of employers in getting injured workers back to work.
>
> The panel should also feel free to consider any other aspect of the workers' compensation system which it determines has a significant impact on system's cost or effectiveness.

COMMITTEE MEMBERSHIP

A total of 24 people participated actively in developing the report. They include:

Steve Keefe, Chairman
Francis Boddy
Mark Catron
Charles Clay
Al Dees
Anthony DeZiel
William Donohue
Richard Ehret
John Erickson
Earl Gustafson
Helen Holmes
Duane Johnson
Thomas Jones
Mike Kelly
Larry Koll
Marjorie Kress-Joanis
Bud Malone
Joan Niemiec
Wayne Olson
James Ranum
Steve Rothschild
John Rukavina
Jerome Urban
Peter Weber

The committee met 26 times. Meetings were held weekly from 4:30-7:00 p.m. generally. The committee alternated meeting in Minneapolis and St. Paul. The committee began meeting on June 8, 1982 and finished its work on December 7, 1982.

The committee's first several meetings were spent learning about the workers' compensation system. During this time the committee relied heavily upon testimony from resource guests. Detailed minutes were kept of each meeting, copies of which can be obtained upon request at the Citizens League office.

RESOURCE GUESTS

The Citizens League and the members of the workers' compensation committee would like to thank the following people for appearning before the committee as resource guests:

Craig Anderson, director, Actual and Statistical Services, Workers' Compensation Association
John Burton, professor, Cornell University, New York
Anne Clayton, manager, Workers' Compensation Claims, ALEXSIS
Dr. John Dowdle, Jr., orthopedic surgeon, St. Anthony Orthopedic Clinic
David Evert, executive consultant, Control Data Corporation Business Advisory Incorporated
Donald Fischer, attorney, U.S. Steel Corporation
Gene Gubera, vice president, Workers' Compensation Insurers Rating Association of Minnesota
Dan Gustafson, secretary/treasurer, Minnesota AFL-CIO
Dr. Phillip Haber, psychologist/rehabilitation counselor, Metro Rehabilitation Services Incorporated
Duane Harvis, chief hearing examiner, State Office of Administrative Hearing
John Hildebrandt, president, Workers' Compensation Insurers Rating Association of Minnesota
Kris Johnson, director, Public Affairs, Medtronics, Incorporated
Robert Johnson, vice president, Insurance Federation of Minnesota
Robert Johnson, attorney, Johnson and Getts
Larry Koll, attorney, Minnesota Self-Insurer's Association

John Lennes, general council, Minnesota Association of Commerce and Industry
Michael Markman, former commissioner of Insurance
Ken Martyn, private consultant, Ken S. Martyn and Associates
Robert McCarthy, justice, Workers' Compensation Court of Appeals
Robert McMasters, director of claims, North Star Casualty Service Incorporated
Dr. Loren Pilling, director, Pain Clinic, Metropolitan Medical Center
Bob Provost, president, Minnesota Insurance Information Center
Brad Robinson, president, Robinson Rubber Products
Ivan Russell, director, Minnesota OSHA
George Scott, justice, Minnesota Supreme Court
Wayne Simoneau, state representative
Anne Tewart, administrator, Workers' Compensation, NSP
LeRoy Wacker, Injured Workers' Association
George Weaver, accident investigator, Weaver and Associates, Incorporated
C. Arthur Williams, professor, Industrial Relations, University of Minnesota

The League and committee would also like to thank the following people for assisting the committee.

Stephanie Braz, National Council on Compensation Insurance
David Corum, Commerce Department, Insurance Division
Judith Hale, Commerce Department, Insurance Division
Mahlon Hanson, Department of Labor and Industry
Mary Hunstiger, Commerce Department, Insurance Division
Charles Hutchinson, Division of Vocational Rehabilitation, Department of Economic Security
Paul Hyduke, Senate Research
Ralph Koenig, district director, United Auto Workers, Milwaukee, Wisconsin
Joe Looby, chairman, Wisconsin State Assembly Labor Committee
Jess McCavitt, Workers' Compensation Reinsurance Association
Dr. Walter McClure, director, Center for Policy Study
Nancy Myers, Commerce Department, Insurance Division
Hugh Russell, assistant administrator, Workers' Compensation Division, Wisconsin Department of Industry, Labor and Human Relations
John Schmitt, president, Wisconsin AFL-CIO
Marvin Tupesis, manager, Benefit Services, Rexnord Inc.
Bob Vandenberg, director, Safety, General Mills Inc.
Jerome Van Sistine, chairman, Senate Labor Committee, Wisconsin Legislature
Gladys Westberg, Department of Labor and Industry
Bill Wilberg, vice president, Wisconsin Association of Manufacturers and Commerce

A special thank you is extended to Ann Cline at the St. Paul Companies and Cindy Wentkiewicz at NSP for assisting the committee with meeting places and equipment.

Staff assistance was provided the committee by Bradley Richards, Donna Keller and Joann Latulippe.

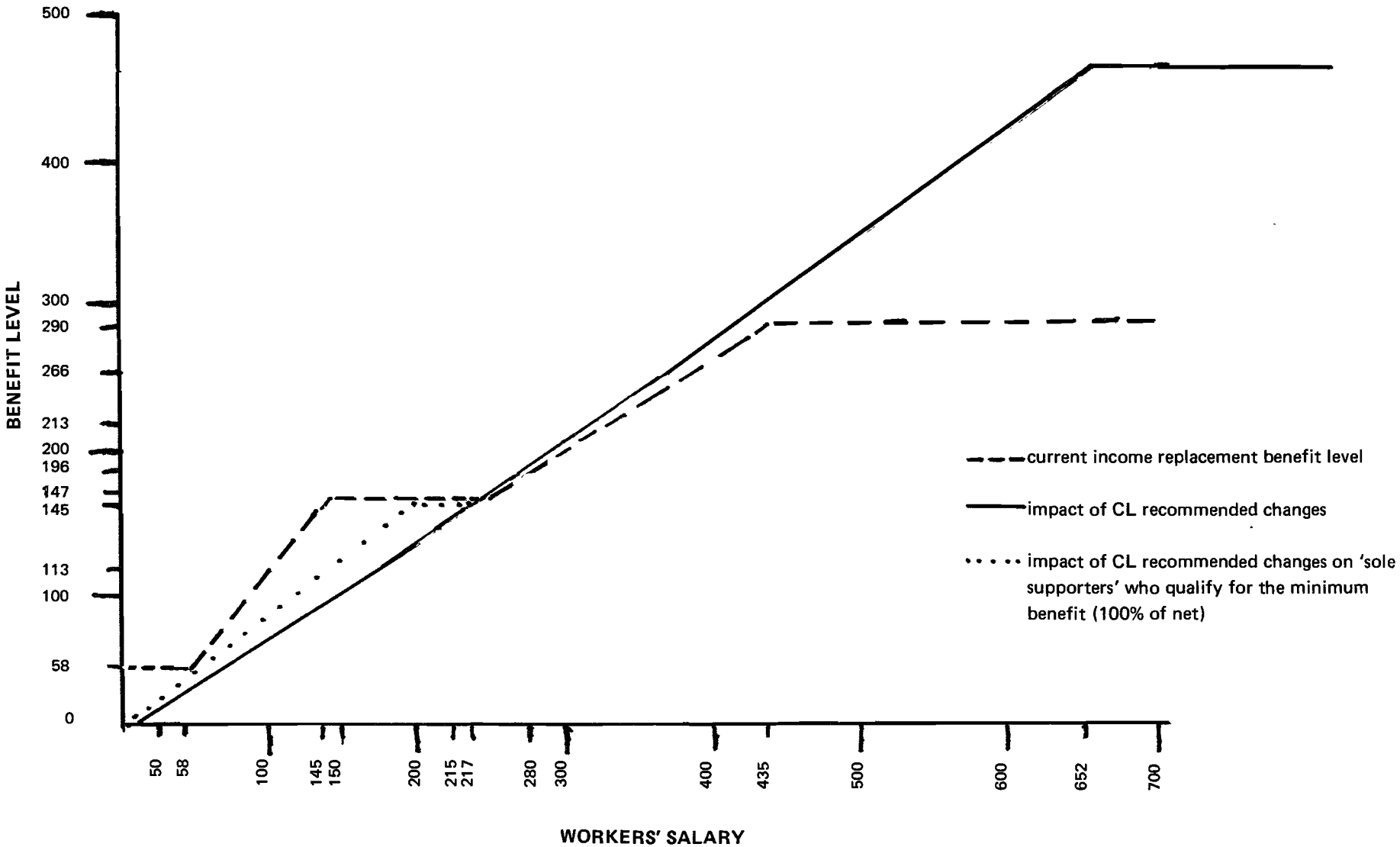
APPENDIX 1

WORKERS' COMPENSATION BENEFIT SUMMARY

BENEFIT	INJURY				
	Temporary Total	Permanent Total	Temporary Partial	Permanent Partial	Death
	(80% of all indemnity claims/21% of all dollars)	(.6% of all claims/8% of all claim dollars)		(15% of all claims/44% of claim dollars; includes the TT dollars paid during disability too)	(3% of claims/17% of claim dollars)
A. Cash benefits					
Eligibility applies if you miss three or more days of work.	X	X	X	Eligibility applies for any physical impairment or illness that is work related and results in permanent disability.	
After 10 days disability, benefits pick up the first three days of disability.	X	X	X		
Benefits equal 66 2/3% of workers wage at time of injury, subject to maximum of statewide average weekly wage and minimum of 50% of statewide average weekly wage or workers pre-injury wage, whichever is less down to an absolute minimum of 20% of the average statewide weekly wage.	X	X	Benefits equal 2/3 of lost wages. (2/3 difference between pre-injury and current wage.) Subject to maximum of statewide average weekly wage. No minimum.	For 'scheduled benefits' a cash payment equal to: * Extent of loss or loss of use of bodily part, times * Number of weeks assigned to that bodily part, times * 66 2/3 of workers pre-injury wages (subject to a maximum of statewide average weekly wage). For 'unscheduled benefits' a cash payment equal to: * 2/3 of lost wages. * Each benefit is increased by 15% in cases of multiple permanent partials.	Payment based upon: * Weekly wage of deceased worker. * Number of dependents. * Eligibility of family for social security benefits. * Future marital status spouse. For surviving spouse without dependent children payment may come as either an annual installment for 10 years escalated at a maximum of 6% per year, or as a lump sum payment equal to 10 years benefits not escalated.
Workers under age 18 at time of injury get the maximum automatically.	X	X	X		
Benefits are further adjusted as follows:					
* Escalated annually at a maximum rate of 6%.	X	X	X		
* Federal government reduces social security disability benefits so that total benefits are no more than 80% of prejury weekly wage.	X	X	X		
* After $25,000 in benefits are paid workers' comp. benefits are reduced $ for $ for any government disability benefits received.	X	X	X		
* After 104 weeks benefits are adjusted to bring everyone up to 65% of average statewide weekly wage.	X	X	X	X	X
* All benefits are tax free.	X	X	X	X	X

	Temporary Total	Permanent Total	Temporary Partial	Permanent Partial	Death
B. Rehabilitation benefits					
Eligible for 156 weeks of compensation at 125% of weekly total disability benefit. (This applies only to retraining types of rehabilitation.)	X	X	X		
OR					
Eligible for an on-the-job training program where benefit equals after tax wage at time of injury.	X	X	X		
AND					
Eligibility for necessary incidental expenses, (books, etc.)	X	X	X		
C. Medical benefits					
Eligibility upon injury.	X	X	X	X	
Eligibility applies to:					
* Hospital bills.	X	X	X	X	
* Doctor bills.	X	X	X	X	
* Free choice of physican.	X	X	X	X	
* Free non-emergency surgery.	X	X	X	X	

APPENDIX 2
IMPACT OF CL RECOMMENDATIONS ON BENEFIT LEVELS



ADDENDUM TO THE REPORT

Summary of Minority Reports

The following paragraphs summarize minority positions which dissent from the majority report. Three minority reports were filed with the Citizens League Board of Directors. Full copies of these minority reports are available upon request at the Citizens League office.

Minority report #1

Four members of the committee submitted a minority report to the Board which dissented from the majority's first recommendation, regarding the payment of permanent partial benefits. The minority recommended that Minnesota's system for paying permanent partial disability benefits be changed so that no permanent partial benefits would be awarded unless the employee experienced actual wage loss after reaching maximum medical recovery. In cases where actual wage loss was experienced because an employer was unable to provide the employee with his old job, the permanent partail benefits would vary in size depending upon several factors related to the employee's presumed future earning capacity. These factors would include such things as age, whether the employer had made rehabilitation services available to the employee within 30 days of learning that the employee was unable to return to his old job, the employee's level of education, and the wage of any new job that might be offered to the employee.

Minority report #2

Three other members of the committee submitted a minority report which dissented from the majority opinion regarding benefits, primarily. In this report, the minority rejected to the majority's recommendation to change the minimum benefit, reduce the benefit for retraining, eliminate supplementary benefits, and eliminate the eligibility of minors with permanent partial disabilities to receiving the maximum temporary total disability benefit. The minority expressed the opinion that "it is very difficult to understand" why the committee would make these recommendations, considering its conclusions that the benefit levels are not the primary problem with the workers' compensation system.

This minority report also included an objection to the permanent partial recommendations of the majority. The minority felt that they would lead to more litigation.

The minority felt that application of the committee's recommendations regarding process and administration of the system would do much to improve the system.

The minority also objected to the implication that employees need an incentive to return to work. The majority report reflected an effort to award employees for making a conscientious effort to return to work. The minority objected to the implication that such rewards were necessary in the workers' compensation system.

Finally, the second minority report included a recommendation not in the majority report, for a state workers' compensation fund.

Minority report #3

This minority report was submitted by one member of the committee. He objected to the majority's opinion in several areas. First, he objected to the majority's opinion that certain features in the benefit structure reward disability, or encourage workers to prolong their disability. He believes the benefits cited by the committee in this regard are needed financial support for workers. Secondly, the minority report objected to the majority's recommendation regarding permanent partial disability benefits, saying he believed the majority's new plan would create more litigation, increase costs, and present potential for abuse without providing adequate wage loss protection for truly injured workers. Thirdly, the minority objected to the majority's recommendation that employers be relieved of the obligation to pay for pre-existing disabilities not related to work. The minority felt that the right to permanent partial disability benefits for pre-existing disability is well established in case law and ought to be continued. Fourth, the minority objected to the majority's recommendation that workers' compensation benefits be reduced by the amount a worker receives in social security benefits in order to enable employers to get the full benefit of federal social security payments to injured workers. This minority report reflected the belief that the workers' compensation in Minnesota works well in 85-90 percent of the cases and that it "would make more sense to direct our efforts to fine tuning the present system rather than overhauling it."

Finally, the minority felt that the majority should have recommended the establishment of a competitive state fund and felt that the majority erred in not giving this issue thorough study and a positive recommendation.

WHAT THE CITIZENS LEAGUE IS

Formed in 1952, the Citizens League is an independent, nonpartisan, nonprofit, educational corporation dedicated to understanding and helping to solve complex public problems of our metropolitan area.

Volunteer research committees of the Citizens League develop recommendations for solutions after months of intensive work.

Over the years, the League's research reports have been among the most helpful and reliable sources of information for governmental and civic leaders, and others concerned with the problems of our area.

The League is supported by membership dues of individual members and membership contributions from businesses, foundations and other organizations throughout the metropolitan area.

You are invited to join the League, or, if already a member, invite a friend to join. An application blank is provided for your convenience on the reverse side.

WHAT THE CITIZENS LEAGUE DOES

RESEARCH PROGRAM

- Four major studies are in progress regularly.
- Each committee works 2½ hours every other week, normally for 6-10 months.
- Annually over 250 resource persons made presentations to an average of 25 members per session.
- A fulltime professional staff of eight provides direct committee assistance.
- An average in excess of 100 persons follow committee hearings with summary minutes prepared by staff.
- Full reports (normally 40-75 pages) are distributed to 1,000-3,000 persons, in addition to 3,000 summaries provided through the CL NEWS.

CL NEWS

- Four pages; published every two weeks; mailed to all members.
- Reports activities of the Citizens League, meetings, publications, studies in progress, pending appointments.
- Analysis data and general background information on public affairs issues in the Twin Cities metropolitan area.

PUBLIC AFFAIRS ACTION PROGRAM

- Members of League study committees have been called on frequently to pursue the work further with governmental or nongovernmental agencies.
- The League routinely follows up on its reports to transfer, out to the larger group of persons involved in public life, an understanding of current community problems and League solutions.

PUBLIC AFFAIRS DIRECTORY

- A 40-page directory containing listings of Twin Cities area agencies, organizations and public officials.

COMMUNITY LEADERSHIP BREAKFASTS
LANDMARK LUNCHEONS
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- Public officials and community leaders discuss timely subjects in the areas of their competence and expertise for the benefit of the general public.
- Held from September through May.
- Minneapolis breakfasts are held each Tuesday from 7:30 - 8:30 a.m. at the Lutheran Brotherhood.
- St. Paul luncheons are held every other Thursday from noon to 1 p.m. at the Landmark Center.
- South Suburban breakfasts are held the last Thursday of each month from 7:30 - 8:30 a.m. at the Lincoln Del, 494 and France Avenue South, Bloomington.
- An average of 35 persons attend the 64 breakfasts and luncheons each year.
- Each year several Q & A luncheons are held throughout the metropolitan area featuring national or local authorities, who respond to questions from a panel on key public policy issues.
- The programs attract good news coverage in the daily press, television and radio.

SEMINARS

- At least six single-evening meetings a year.
- Opportunity for individuals to participate in background presentations and discussions on major public policy issues.
- An average of 75 person attend each session.

INFORMATION ASSISTANCE

- The League responds to many requests for information and provides speakers to community groups on topics studied.
- A clearinghouse for local public affairs information.

Citizens League non-partisan public affairs research and education in the St. Paul-Minneapolis metropolitan area. **84 S. 6th St., Minneapolis, Mn. 55402 (612) 338-0791**

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Please check one: ☐ Individual ($25) ☐ Family ($35) ☐ Contributing ($45-$99) ☐ Sustaining ($100 and up) ☐ Fulltime Student ($15)

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