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The Breaking of a Compromise: An Analysis of Wyoming Worker's Compensation Legislation, 1986-1997

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THE BREAKING OF A COMPROMISE: AN ANALYSIS OF WYOMING WORKER'S COMPENSATION LEGISLATION, 1986-1997.

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On January 21, 1913, Governor Joseph M. Carey addressed a joint session of the 12th Wyoming Legislature fulfilling his constitutional obligation to communicate to the legislature information about the state's condition and to recommend matters for legislative consideration.[1] One of Governor Carey's recommendations was that the Legislature pass a workmen's compensation law.[2] The Governor noted the inadequacies of relying on damage suits by employees against employers and quoted the Wisconsin Legislature's Legislative Committee chairman who outlined the following four important reasons for such a law:

> First, to furnish prompt and reasonable compensation to the injured employee;
>
> Second, to utilize for the injured employee a large portion of the great amount of money wasted under the present system;
>
> Third, to provide a tribunal where disputes between employer and employee in regard to compensation may be settled promptly, cheaply and summarily;
>
> Fourth, to provide a means for minimizing the number of accidents in industrial pursuits.[3]

In response to the Governor's recommendation, the Legislature adopted a bill[4] allowing voters to amend Article 10, Section 4[5] of the Wyoming Constitution, which prohibited laws limiting damages in personal injury cases. The

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1. House Journal, 12th Leg. 40 (Wyo. 1913); WYO. CONST. art. IV, § 4.
2. House Journal, 12th Leg. 40.
3. *Id.*
4. 1913 Wyo. Sess. Laws ch. 79.
5. WYO. CONST. art. X, § 4 originally provided:

   No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employee waving any right to recover damages for causing the death or injury of any employee shall be void.

The intention of the framers of the Constitution was to preserve the right to recover damages for injury or wrongful death by any person. *Mills v. Reynolds*, 837 P.2d 48, 57-58 (Wyo. 1992) (Cardine, J., specially concurring). In order to allow for the creation of a worker's compensation system which provided limited compensation benefits as the sole and exclusive remedy for work related injuries an amendment to Article X, § 4 was necessary. *Markle v. Williamson*, 518 P.2d 621, 625 (Wyo. 1974).

bill authorized the Legislature to create a workmen's compensation law which would provide for maintenance of funds out of which compensation would be paid to injured workers in lieu of common law rights of action. The amendment came before the voters in the 1914 general election and easily tallied the required number of votes, marking only the second time the Wyoming Constitution had been amended.[6]

The Legislature held its next general session in 1915. Calling the constitutional amendment a direct mandate from the people, newly elected Governor John B. Kendrick charged the Legislature with the duty of enacting worker's compensation legislation.[7] Governor Kendrick urged the Legislature to be circumspect in balancing the interests involved:

> I would recommend in framing such a law, that due care be exercised to fulfill every function contemplated, that every provision be included to render a just compensation to the injured, or, in case of death, to those dependent upon him. But, at the same time, such a law should be calculated to avoid so far as possible, the working of hardship upon industry that pays the tax.[8]

Recognizing the need for a quick and cost effective means of deciding disputes over benefits under the act, Governor Kendrick also specifically recommended that the district courts oversee the adjustment of claims.[9]

The Legislature responded and passed the Workmen's Compensation Law (the Act).[10] During consideration of the bill, Rep. George Young, Jr., a Sweetwater County Democrat, addressed problems which would plague the system throughout its existence:

> The workingmen of Wyoming want a workman's compensation law. They naturally want a law that carries the very highest possible benefits. I want to say now that it is my honest conviction that the benefits specified in this act are too low. It is true that we have no adequate figures at hand, that apply particularly to our State, that would let us accurately base a demand for higher rates with the certain knowledge that the fund accumulated would pay for them. It

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6. 2 WYOMING BLUE BOOK 53-54 (Virginia Cole Trenholm ed., 1st ed.1974). The amendment required a majority vote of all persons voting in the election and not just those voting on the amendment. WYO. CONST. Art XX, § 1; *see* State ex rel. White v. Hathaway, 478 P.2d 56 (Wyo. 1970). The total vote was 44,877. WYOMING BLUE BOOK at 54. 24,258 votes were tallied for the amendment, 3,915 against. *Id.*

7. House Journal, 13th Leg. 12 (Wyo. 1915).

8. *Id.* at 12-13.

9. *Id.* at 13.

10. The Workmen's Compensation Act, No. 147, 1915 Wyo. Sess. Laws ch. 124 (codified as amended at WYO. STAT. ANN. §§ 27-14-101 to -805 (Michie 1997)).

> is because of this, and because of the fact that presenting a demand for higher rates of compensation would open the way for all sorts of amendments to the bill, that I make this statement. The time for consideration of the bill is short; amendments here might encourage amendments elsewhere; opposition might be excited to the measure, and I want no act of mine to endanger the passage of the bill. The rates are too low, I believe, and it is because of this belief that I want to see the present bill passed so that the rates therein, low as they are, will serve to gather complete and accurate data, as to the deaths, total disabilities and partial disabilities (and duration) to the end at the expiration of two years the workmen of Wyoming will have had their stand for higher rates justified. We are aware of the deficiencies that are in the bill, and, like all of you who have had your proposed legislation amended or presented in a form not entirely satisfactory, can only take satisfaction out of the thought that it is, after all, providing for better net results to the disabled workmen than they have gotten before. I would rather see the present bill, with its present minor deficiencies, pass and become a law, than one with higher rates but so worded that it would be almost impossible to get the awards. With the bill for the next two years will be years of experience. Without any law on the subject the next session of the Legislature would be again put to the necessity of guessing on this very important subject. Knowing the opposition that would develop if I advanced higher rates, and for the reason explained in this statement, I refrain from proposing any change.[11]

Representative Young was only partially right. After only two years of experience, the 1917 Legislature increased employee compensation benefits and cut employer premiums by 25%.[12] By June 30, 1918, the Industrial Accident Fund—a fund created by the Act, financed by industry, and held in the state treasury—amounted to more than $536,000.[13] The Legislature increased employee benefits during each legislative session until 1929.[14]

In 1918, the Wyoming Supreme Court in *Zancanelli v. Central Coal and Coke Company*, determined the Act to be constitutional.[15] The court noted that in adopting the worker's compensation law "both employers and employees gave up something that they each might gain something else, and it was in the

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11. House Journal, 13th Leg. 329 (statement of Rep. Young).
12. 1917 Wyo. Sess. Laws ch. 69, § 3.
13. Zancanelli v. Central Coal and Coke Co., 173 P. 981, 983 (Wyo. 1918).
14. 1919 Wyo. Sess. Laws, ch. 117, § 6; 1921 Wyo. Sess. Laws, ch. 138, § 7; 1923 Wyo. Sess. Laws ch. 60, §§ 10-12; 1925 Wyo. Sess. Laws ch. 124, § 4; 1927 Wyo. Sess. Laws ch. 111, § 5.
15. 173 P. 981 (Wyo. 1918).

nature of a compromise . . . . "[16] The court cited the Washington Supreme Court's language with approval:

> Our act came of a great compromise between employers and employed. Both had suffered under the old system; the employers by heavy judgments of which half was opposing lawyers' booty; the workmen through the old defenses or exhaustion in wasteful litigation. Both wanted peace. The master, in exchange for limited liability, was willing to pay on some claims in [the] future, where in the past there had been no liability at all. The servant was willing, not only to give up trial by jury, but to accept far less than he had often won in court, provided he was sure to get the small [sum] without having to fight for it. All agreed that the blood of the workman was the cost of production; that the industry should bear the charge.[17]

Analyzing the System

The struggle between providing adequate levels of compensation benefits and maintaining low employer premiums has plagued worker's compensation systems nationwide. In the early 1970s, the federal government by threats of intervention, prodded Wyoming and other states into reforming their worker's compensation systems to provide for increased benefits.[18] In Wyoming, how-

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16. *Id.* at 989.

17. *Id.* (quoting Stertz v. Industrial Ins. Comm'n, 157 P. 256, 258 (Wash. 1916)).

18. In 1970, as part of the Occupational Safety and Health Act, Congress established the National Commission on State Workmen's Compensation Laws to "undertake a comprehensive study and evaluation of state workman's compensation laws in order to determine if such laws provide for an adequate, prompt, and equitable system of compensation." Act of Dec. 29, 1970, Pub. L. No. 91-596, § 27, 84 Stat. 1616 (codified at 29 U.S.C. § 676 (1994)).

The Commission issued its report in July of 1972. *See* 10 LARSON'S WORKER'S COMPENSATION LAW 609 (1996). The Commission criticized state worker's compensation laws as being "in general neither adequate nor equitable" and called for congressional action to "bring about the reforms essential to the survival of the state workers' compensation system." *Id.* at 624. The Commission identified the main barrier to effective worker's compensation reform as the fear that compensation costs may drive employers to move away from markets where the protection and benefits afforded disabled workers were less expensive but inadequate. *Id.* The Commission recommended elements necessary for an adequate modern worker's compensation system:

1. Compulsory Coverage;
2. No Occupational or Numerical Exemptions to Coverage;
3. Full coverage of Work Related Diseases;
4. Full Medical and Physical Rehabilitation Services without arbitrary Limits;
5. Employees Choice of Jurisdiction for Filing Intrastate Claims;
6. Adequate Weekly Cash Benefits for Temporary Total, Permanent Total, and Death Cases; and
7. No Arbitrary Limits on the Duration or Sum of Benefits.

Id. at 623.

The report recommended that Congress undertake an evaluation of states' compliance with the Commission's recommendations by July 1, 1975, and, if necessary, enact legislation to guarantee compliance with the recommendations. *Id.*

Apparently, the Commission's recommendations and implied threat of federal action were heard

ever, employer premiums were not adjusted. As a result of employer premium collections not meeting benefits paid in claims, the 1980s were years of financial losses.[19]

As noted earlier, the original worker's compensation law concept is in the form of a trade-off in which the employees, in exchange for giving up their common law rights of recovery against their employers for work related injuries, receive certain limited benefits regardless of fault. Employers, in exchange for funding the worker's compensation system, receive immunity from lawsuits brought on behalf of injured workers. Both sides recognized that the "blood of the workman" was the cost of production and that industry should bear the charge.[20] This article analyzes the last twelve years of legislative action concerning the Wyoming Worker's Compensation Act (the Act). One conclusion argues that legislative action has fundamentally eroded employee benefits and rights which were promised in exchange for the agreement by employers to adequately fund the system and consent to the award of limited benefits without fault.

This article also argues that the Wyoming Worker's Compensation Division (the Division) has become one of the most powerful agencies in state government, and with that power has negatively influenced employee claims procedures. The Division has become a major force in the Legislature. It has exercised its influence to shape the legislation which it is charged with administering and to undercut the independence of those charged with deciding cases. Instead of a speedy and efficient system of providing benefits, injured workers face increasing procedural hurdles—and in the Division—a well-funded adversary which controls not only the purse strings of the system, but also the release of medical and other information concerning employer and employee claims.

This article will question the basic fairness of the last twelve years of legislative action in light of the original purpose underlying the creation of a worker's compensation system at the time of the constitutional amendment. Readers are asked to reach their own conclusion whether those recent

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even in Cheyenne. During his address to the 1973 general session of the Legislature, Governor Stanley K. Hathaway called upon the Legislature to enact a recodification of the Worker's Compensation Act. House Journal, 42nd Leg. 495 (Wyo. 1973). The proposed recodification however, died in the House. *See, e.g., id.* at 593, 720, 821.

Ed Herschler was elected to succeed Governor Hathaway in 1974. In his first address to the Legislature, Governor Herschler renewed the call for a "long overdue recodification of our present worker's compensation laws" and noted that it was imperative that the legislature provide for increased benefits for injured workers and the families of the deceased workers which he characterized as being "intolerably low." House Journal, 43rd Leg. 19 (Wyo. 1975).

19. *See infra* note 21.

20. *Zancanelli*, 173 P. at 989 (quoting Stertz v. Industrial Ins. Comm'n 158 P. 256, 258 (Wash. 1916)).

changes—which have resulted in the system's financial success—were achieved at the cost of breaking the original bargain which created our worker's compensation system.

I. FISCAL CRISIS—LEGISLATIVE MALAISE

A. 1985 & 1986 General Sessions—Initial Rumblings

For a number of years prior to 1986, the total amount paid in worker's compensation benefits exceeded the amount of premiums collected from employers.[21] In 1985, the Legislature considered a bill which addressed the ongoing fiscal hemorrhaging of the system. The bill would have raised employer premium rates 1% across the board and allowed the Division to borrow $10 million from the budget reserve account.[22] After initially passing the House, the Senate amended the bill by stripping away employer premium increases and raising the Division's borrowing authority to $15 million.[23]

During the 1986 general session, the Joint Senate Labor and Federal Relations Interim Committee and the House Labor, Health and Social Services Interim Committee sponsored a bill to provide for a comprehensive revision of the Act.[24] That bill featured a proposal to adopt an experience-based rating system to determine employer premium rates which did not provide for a cap on employer premiums.[25] Other features of the bill included provisions for absolute co-employee immunity, vocational rehabilitation benefits, the adjudication of contested claims by independent hearing officers rather than courts, an audit of the Division, centralized claims filing with the Division instead of the clerks of the district courts, and an extension of the Division's borrowing authority.[26] The bill passed the House with a few relatively minor

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21. Letter from Martin Mueller, Administrator, Wyoming Worker's Safety and Compensation Division (December 10, 1997; attaching financial data) [hereinafter Mueller Letter] (on file with the *Land and Water Law Review*).

Fiscal Year	Premium Collected	Claims Paid Costs	Difference
1981	$26,457,625.00	$36,466,607.00	-$10,008,932.00
1982	$35,247,061.00	$42,852,630.00	-$ 7,605,569.00
1983	$27,291,855.00	$43,667,802.00	-$16,447,947.00
1984	$31,414,885.00	$47,295,732.00	-$15,880,847.00
1985	$35,984,619.00	$45,066,546.00	-$ 9,081,921.00
1986	$36,644,591.00	$49,519,341.00	-$12,874,075.00

22. H.R. 455, 48th Leg., Gen. Sess. (Wyo. 1985).

23. House Journal, 48th Leg., Gen. Sess., 481-85 (Wyo. 1985).

24. H.R. 92, 48th Leg., Budget Sess. (Wyo. 1986); *see* House Journal, 48th Leg., Budget Sess. 164-74 (Wyo. 1986).

25. House Journal, 48th Leg. at 164-65.

26. *Id.*

amendments,[27] the most substantial of which limited increases in employer premium rates for the fiscal year commencing July 1, 1987, over individual rates in effect for fiscal year commencing July 1, 1996 to 50%.[28] The bill passed the House by an overwhelming bipartisan vote of 55 to 8.[29]

Upon arrival in the Senate, the bill faced powerful opposition. The Senate Labor Committee, voting along party lines, completely gutted the bill and stripped away all the provisions except the Division's extended emergency borrowing authority for one year.[30] The Legislature approved the gutted bill on a straight line Republican majority vote of 17 to 11.[31] Governor Herschler attributed this action to lobbying by the oil and gas industry who paid only $6.8 million in employer premiums to the Division while the Division paid out $13.5 million in claims by oil and gas workers.[32] A spokesman for the oil and gas industry denied the Governor's charge.[33]

Additional opposition to the bill surfaced from clerks of district court who objected to the centralization of claims processing in the Division. A spokesman for the clerks indicated that the bill would adversely affect a claimant's access to local sources of information concerning his or her worker's compensation case.[34]

The Senate ultimately passed the bill's gutted version. Only Senator Alvin Weiderspahn, a Laramie County Democrat, joined the Republican majority in approving the amended bill.[35] The House, however, refused to concur and despite attempts to compromise, the bill died.[36] In his closing remarks to members of the House, Governor Herschler noted that he was troubled over the entire worker's compensation matter and how it was handled. He warned:

> I know that some of you share my disappointment and concern. However, you and your constituents should know that this unfinished agenda *will be* the new agenda for the next legislature and administration. Like a hungry dog, these issues will bother us, and our successors, until they are satisfied.[37]

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27. *Id.* at 165.
28. *Id.* at 170.
29. *Id.* at 172.
30. CASPER STAR-TRIBUNE, March 11, 1986, at A1.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.* at A-5.
35. House Journal, 48th Leg., 172-73 (Wyo. 1986).
36. *Id.* at 173.
37. *Id.* at 333.

B. 1986 Special Session

On June 2, 1986, Governor Herschler issued a proclamation which called the Legislature into special session.[38] The Governor's proclamation stated that "an emergency exists relating to the state workers' compensation program which requires legislative action by the Forty-eighth Legislature and cannot be deferred until the convention of the general session of the Forty-ninth Legislature."[39]

The special session convened the morning of June 16, 1986. In his opening remarks, Governor Herschler outlined the problems facing the worker's compensation system and the approach taken to address those problems in the bill drafted by a select committee appointed following the 1986 general session.[40] Prior to discussing the proposed legislative solution, Governor Herschler made clear his displeasure at the events of the prior general session:

> Know there *are* some good things to say about your return. You will be gone soon (hopefully). Also, you do attract a fair number of out of state lobbyists who help stimulate our economy, especially in the food and beverage areas.
>
> On a more serious note, though, this session gives you the opportunity as a body to address some pressing issues of significance to the state of Wyoming and its citizens. I am confident that you arrive here today with the enthusiasm and commitment to handle these important issues efficiently and effectively.
>
> I would like to proceed in my specific comments with the assurance that I'm not here to beat a dead horse. In my mind, nothing is gained by discussing what did or didn't happen last session. We face *this* special session as a *new* opportunity to serve the men and women who elected us into office. Quoting from my message to you in February, let's 'be proud of our actions in this, the *last* session of the Forty-eighth Legislature.'[41]

The worker's compensation system was losing nearly $700,000 each month and the Governor warned that the fund could go bankrupt before the end of the year.[42] He called for either additional funding or for extending the Division's borrowing authority in order to address the declining fund balance and to allow time for the new system of assessing employer premiums to be

38. House Journal, 48th Leg., Spec. Sess., 1 (Wyo. 1986).
39. *Id.*
40. *Id.* at 2-3.
41. *Id.* at 2.
42. *Id.*

phased in. In this way, Wyoming's struggling businesses would avoid shouldering the full burden of the growing deficit.[43] He again recommended that the Legislature provide for an experience-based rating system. He also noted that the select committee supported a resolution to amend the constitution and authorize an expansion of coverage under the worker's compensation system to include, at the election of the employer, employees in non-hazardous working conditions.[44] Finally, the Governor supported the appropriations and personnel the bill authorized in order to develop the Division's computer capabilities and employ the expertise required for the new classification and rating system.[45] The Governor challenged the Legislature to work as a team and resolve the serious problems confronting the system. He emphasized that the state could not afford the Legislature's failure to reach a consensus as a result of resurrecting old arguments and ideas.[46]

The new bill contained several significant changes from the bill rejected in the 1986 general session. The most significant change was the proposal which phased in an employer experience-based rating system while leaving intact a ceiling on employer premium rates at 5.5%.[47] The bill also added a proposal to temporarily divert a portion of severance tax revenues to the worker's compensation system as a short-term solution to the ongoing financial losses,[48] and retained a change from a judicial to an administrative system of adjudicating contested claims. In addition, the legislation retained a requirement that premium rates established by the Division be approved by the Insurance Department.[49] In contrast to the bill which failed during the 1986 general session, provisions for centralization of claims processing in the Division and for vocational rehabilitation benefits were conspicuous by their absence. The new system was scheduled to begin operation July 1, 1987.[50]

Unlike the 1986 general session, the special session adopted the proposed legislation with only minor modifications. The Legislature increased the amount of funds diverted from the permanent mineral trust fund from $5 million to $6.5 million and extended the Division's emergency borrowing authority.[51] However, as will be seen later, the 1986 special session's work did not address the core issue which created the need for the special session—employer premiums which did not support claims costs. Specifically, the law's

43. *Id.* at 3.
44. *Id.*
45. *Id.*
46. *Id.*
47. 1986 Wyo. Sess. Laws, Spec. Sess., ch. 3 (codified at WYO. STAT. ANN. § 27-14-201 (Michie 1977 & Supp. 1986)).
48. *Id.* (codified at § 39-6-302).
49. *Id.* (codified at § 27-14-201).
50. *Id.* (codified at § 27-14-804(6)).
51. *Id.* (codified at § 39-6-305(C)).

5.5% ceiling on employer premium rates effectively duplicated the artificially low rates paid by employers and industries having the worst injury rates as before the special session.

Under prior law, the Division maintained a separate account for each employer contributing into the fund.[52] The agency required new employers to pay premiums at the rate of 5% of their monthly payroll for the first year.[53] The base premium for established employers was 3/4% of their monthly payroll which was paid until the employer's account held a balance of 1% of the employer's average reportable monthly payroll multiplied by twelve (12) or $3,000, whichever was greater.[54] Employers with overdrawn accounts paid from 4.5% to 5.5% per month until the overdraft was cured.[55] In addition to payments into their individual accounts, all employers paid an additional 1% into a reinsurance fund designed to pay benefits on behalf of employees whose employers were no longer contributing into the fund.[56] New employers and overdrawn employers received a credit for premiums paid to the reinsurance fund from their base premium payments.[57] By raising the ceiling on employer premiums to 5.5%, the 1986 special session effectively raised premiums for the employers having the worst claims history by only 1% (4.5%-5.5%).

Financial data compiled by the Division underscores the fundamental lack of change in employer premium rates. For fiscal year 1987, employer premiums collected totaled $27,891,080.[58] For fiscal year 1988—the first year that the 1986 special session recodification was in effect—employer premiums totaled $27,788,760.[59] The total amount of employer premiums for the following fiscal year grew only slightly to $28,158,795.[60] During that same three-year period, the total claims paid exceeded premium collections by an average of $16,401,488.[61] For fiscal year 1987 losses totaled $15,290,551; for 1988, $17,064,396; and for 1989, $16,849,517.[62]

The new law only slightly modified employee benefits. Permanent total disability benefits raised incrementally from two-thirds of the state's average weekly wage at the time of the injury times 257 weeks,[63] to two-thirds of the state's average monthly wage for the twelve month period immediately pre-

52. WYO. STAT. ANN. § 27-12-202 (Michie 1977 & Supp. 1983) (repealed 1986).
53. *Id.* § 27-12-202(a).
54. *Id.* § 27-12-202(b).
55. *Id.* § 27-12-203.
56. *Id.* § 27-12-204.
57. *Id.* § 27-12-202(a), 203.
58. Mueller Letter, *supra* note 21.
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. 1986 Wyo. Sess. Laws, Spec. Sess. ch. 3 (codified at § 27-14-405(b)).

ceding the quarter in which the injury occurred times 60 months.[64] Similarly, the recodification modified permanent partial disability benefits from a set number of weeks[65] for scheduled injuries such as loss of a thumb, to a set number of months.[66] Temporary total disability benefits remained virtually unchanged.[67] Total amounts paid for claims following the effective date of the recodification including medical expenses remained fairly consistent with amounts paid before. In fiscal year 1987, the total amount of claims paid was $43,181,631; in 1988, $44,843,372; and in 1989, $45,608,312.[68]

C. *1987 General Session*

The 1987 general legislative session made two minor adjustments to the Act. The Legislature added a provision which allowed non-extrahazardous employers to elect coverage under the act in response to voter approval of a constitutional amendment in the 1986 general election.[69] A second bill allowed extrahazardous employers the option of not covering their clerical personnel.[70] The bill modified definitions of "permanent total disability" and the "permanent partial disability" benefit schedule. An injured worker's ability to continue to perform work at any gainful occupation for which the worker was reasonably suited for by experience or training could be considered in determining eligibility for awards and the amount of those awards.[71]

II. THE CHANGES BEGIN

A. *The 1989 Legislature*

By the time the Legislature's 1989 general session convened, it had become clear that the 1986 special session's recodification did not solve the worker's compensation system's ongoing financial problems. In 1989, the Legislature enacted eight separate bills amending the Act. Some called for

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64. *Id.* (codified at §§ 27-14-403(c), 406).

65. WYO. STAT. ANN. § 27-12-403(c) (Michie 1977 & Supp. 1983) (loss of a thumb 44 weeks).

66. 1986 Wyo. Sess. Laws § 1 (codified at § 27-14-405(b)(i) (loss of a thumb 11 months)).

67. *Compare* WYO. STAT. ANN. § 27-12-402(a) (Michie 1977 & Supp. 1983) *with* WYO. STAT. ANN. §§ 27-14-403(c), 404 (Michie 1977 & Supp. 1987).

68. Mueller Letter, *supra* note 21.

69. 1987 Wyo. Sess. Laws ch. 31 (codified at WYO. STAT. ANN. § 27-14-103(g) (Michie 1977 & Supp. 1987) (repealed 1991)).

70. *Id.* at ch. 94.

71. *Id.* The language allowing for consideration of the individual worker's vocational training and employment background in determining permanent disability awards was originally incorporated into the Act as part of an earlier recodification in 1975. 1975 Wyo. Sess. Laws ch. 149. Prior to the 1975 Act, the act defined permanent total disability as "the loss of both legs or both arms, the total loss of eye sight, paralysis or other conditions permanently incapacitating the workman from performing any work at any gainful occupation." WYO. STAT. § 27-85 (Michie 1957 & Supp. 1973).

In general, the 1975 reenactment of the Worker's Compensation Act increased employee benefits. Its passage was motivated, at least in part, by the threat of federal intervention in the area of worker's compensation law. *See supra* note 21.

relatively minor changes such as allowing parties to use electronic recording of contested case hearings as transcripts upon appeal.[72] Others had more far-reaching effects and radically altered the face of Wyoming's worker's compensation system.

The bill having the greatest impact was entitled simply "Worker's Compensation - Amendments."[73] The single most important change was the transfer of authority for claims processing from district court clerks to the Division.[74] Under prior law, all original reports of injury and claims for payment of benefits were filed with the district court clerk in the county where the injury occurred. The clerk in turn notified the employer and the Division of any claims filed. Either the employer or the Division had the right to object to the payment of any claim within ten days from the date of notice. Absent objection, a presumption arose that the employer and the Division consented to the claim.[75]

Under the new procedure, parties continued to file initial reports of injury and applications for temporary total disability benefits with district courts clerks; all other claims, including claims for payment of medical expenses, went directly to the Division.[76] Now the Division would review all reports of accidents and make an initial determination whether an injury or death was compensable and within the Act's jurisdiction.[77] Individuals with claims for medical and hospital care submitted them directly to the Division which had the authority to approve or deny payment of all or portions of the entire amount claimed.[78] If the Division denied a claim for benefits, or if the Division found the injury was not compensable, the agency was required to notify all affected parties. In turn, those parties had ten days following notice to object in writing and request a hearing.[79] Upon receipt of an objection, the Division was to notify the clerk's office which would refer the case to a hearing examiner who would conduct a contested case hearing and resolve the dispute.[80]

The Legislature granted extensive additional authority to the Division. The Division was empowered to recover amounts mistakenly paid to health care providers by deducting those amounts from future payments or by bringing a civil action.[81] The bill required health care providers to submit written reports to the Division and to notify the Division as soon as practical after re-

72. 1989 Wyo. Sess. Laws ch. 28.
73. *Id.* at ch. 264.
74. *Id.*
75. WYO. STAT. ANN. § 27-14-601(a) (Michie 1977).
76. 1989 Wyo. Sess. Laws ch. 246, § 2 (codified at WYO. STAT. ANN. § 27-14-601 (Michie 1977 & Supp. 1989)).
77. *Id.* (codified at. § 27-14-601(a)).
78. *Id.* (codified at § 27-14-601(b)).
79. *Id.* (codified at § 27-14-601(a-d), (k)).
80. *Id.* (codified at §§ 27-14-601(m), 602).
81. *Id.* (codified at § 27-14-601(f)).

leasing an injured employee from temporary total disability.[82] Uncontested determinations by the Division were not subject to further review.[83] The Division, however, as part of its notice of denial, had to inform employees of the reasons for the denial and notify them of their rights to legal representation and to a hearing before a hearing examiner.[84]

The other significant bill the 1989 Legislature considered was catch-titled "Worker's Compensation—Funding."[85] That bill was designed to meet the ongoing financial deficits troubling the system. The bill gave the Division the authority to borrow an additional $20 million from pooled fund investments and provided a five-year extension for repayment of previously authorized loans.[86] The Legislature appropriated to the Division $416,303 from the general fund and directed the agency to readjust employer premium rates to obtain account solvency by July 1, 1992.[87] Finally, the bill provided for a surcharge on employer premiums of an additional 12% of an employer's base rate.[88] Another bill included an appropriation for the addition of eleven full-time positions and for necessary contractual services and position support costs requested by the Division.[89]

B. Legislative Reaction to Court Decisions.

In a theme that would recur in future legislation, at least two 1989 bills appeared to be directed at reversing Wyoming Supreme Court decisions. Those decisions had narrowed employer immunity and reaffirmed the Division's obligation to provide benefits for latent injuries.

In *Stratman v. Admiral Beverage Corporation*,[90] the family of a bottling plant employee brought a wrongful death action against Admiral after the employee was pulled into canning machinery at Admiral's Pepsi-Cola bottling plant in Worland, Wyoming. Admiral and its affiliated corporation, Fremont Beverages, asserted that they were entitled to employer immunity under the Act.[91] The two companies operated out of a single plant, Fremont having assumed responsibility for all plant employee operations, including wages, taxes, and worker's compensation fund payments.[92] Admiral, which owned the canning machinery in which Stratman died, would reimburse Fremont for a share

82. *Id.* (codified at § 27-14-501).
83. *Id.* (codified at § 27-14-606).
84. *Id.* (codified at § 27-14-601(j)).
85. 1989 Wyo. Sess. Laws ch. 149.
86. *Id.* at ch. 149, §§ 2, 4.
87. *Id.* §§ 5-6.
88. *Id.* § 1 (codified at § 27-14-201 (n)(ii)).
89. *Id.* ch. 212.
90. 760 P.2d 974 (Wyo. 1988).
91. *Id.* at 976.
92. *Id.* at 977.

of operational expenses based on a monthly apportionment of time each employee spent working in Admiral's canning operation.[93] The Wyoming Supreme Court reversed the district court's summary judgment ruling in favor of both Fremont and Admiral on their claims of employer immunity.[94] The court found that Wyoming's Worker's Compensation Act allowed affiliated corporations to report their payroll and pay their premiums into a single consolidated account for purposes of qualifying for employer immunity only upon the express approval and knowledge of the Division.[95] The court found a genuine issue of fact as to whether Admiral contributed into the worker's compensation fund as required by the Act.[96]

In apparent response to the *Stratman* decision, the Legislature amended the Act to allow joint employers to pay into a consolidated worker's compensation account for purposes of making premium payments.[97] The statute defined "joint employer" as "any person, firm, corporation or other entity which employs joint employees, is associated by ownership, commonly managed or controlled and contributes to the worker's compensation account as required by this act."[98]

The Legislature also apparently responded to the court's decision in *State ex rel. Workers' Compensation Division v. Malkowski*[99] by amending the statute of limitations for injuries which develop later in time but as a result of a single mishap.[100] Malkowski was originally injured in 1981 and was treated for his injuries through November of 1981.[101] In 1986, more than four years after the date he last made a claim for benefits, Malkowski filed new claims for payment of medical expenses and temporary total disability benefits following additional surgery to treat his injuries.[102] The Division argued that the agency lacked jurisdiction to reopen Malkowski's case for additional benefits because Malkowski waited more than four years to file the claims.[103] The court rejected that argument and held that Malkowski had sustained a second compensable injury as a result of his deteriorated condition and that all he was required to do was file a claim within one year from discovery of his "new injury."[104]

The Legislature attempted to limit the *Malkowski* holding by providing

93. *Id.* at 976-77.
94. *Id.* at 987-88.
95. *Id.* at 987.
96. *Id.*
97. 1989 Wyo. Sess. Laws ch. 226.
98. *Id.* at ch. 229 (codified at WYO. STAT. ANN. § 27-14-102(a)(xix) (Michie 1977 & Supp. 1989)).
99. 741 P.2d 604 (Wyo. 1987).
100. WYO. STAT. ANN. §§ 27-14-503, 605 (Michie 1977 & Supp. 1989).
101. *Malkowski*, 741 P.2d at 604.
102. *Id.* at 605.
103. *Id.* at 606.
104. *Id.* at 605-06.

that the right to further medical and disability benefits would be barred absent the filing of a claim for additional benefits or modification of previously paid benefits within four years from the date of last payment.[105] An exception allowed payment of additional medical benefits only where the injured employee submitted medical reports to the Division to substantiate his claim, and in addition proved by competent medical authority to a reasonable degree of medical certainty that his need for continued treatment was directly related to the original injury.[106]

The 1989 Legislature also amended the definition of "building service" to include maids, housekeepers, elevator operators and maintenance workers employed in and about office buildings, hotels, motels, apartment houses, schoolhouses, courthouses and public buildings.[107] In so doing, the Legislature anticipated the Wyoming Supreme Court's holding in *State ex rel. Wyoming Workers' Compensation Division v. Medina*.[108] The *Medina* court held that although a hotel maid was not included within the statutorily defined list of extrahazardous employments, her duties fairly fell within the statutorily enumerated extrahazardous occupation of "building service" for worker's compensation benefits purposes and that she was entitled to worker's compensation benefits.[109] The court issued its decision March 23, 1989,[110] sixteen days after the Legislature amended the Act to specifically include hotel maids in the definition of building service.[111]

C. *Reorganization of State Government*

A review of the 1989 general session's activities would be incomplete without a discussion of the Wyoming Government Reorganization Act of 1989.[112] As part of the reorganization of state government, the Legislature created the Department of Employment.[113] Upon approval of the reorganization plan, the Wyoming Worker's Compensation Division would be transferred from the State Treasurer's Office to the Department of Employment.[114] The Legislature required that the plan be implemented no later than July 1, 1990.[115]

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105. 1989 Wyo. Sess. Laws ch. 229 (codified at WYO. STAT. ANN. § 27-14- 503(a) (Michie 1977 & Supp. 1989)).

106. *Id.* (codified at § 27-14-605(c)). The court reaffirmed the "second compensable injury rule" in *Casper Oil Co. v. Evenson*, 888 P.2d 221 (Wyo. 1995), where it rejected an argument that the reopening requirements of § 27-14-605 added by the 1989 Legislature had the effect of overruling *Malkowski*.

107. 1989 Wyo. Sess. Laws ch. 226.

108. 770 P.2d 1104 (Wyo. 1989).

109. *Id.* at 1106.

110. *Id.* at 1104.

111. 1989 Wyo. Sess. Laws ch. 149, §§ 2, 4.

112. *Id.* at ch. 138.

113. *Id.* at ch. 139.

114. *Id.*

115. *Id.*

As a result, for the first time since its creation, responsibility for the Division's day-to-day operations would no longer be under the direct control of an elected state official, but rather a political appointee of the Governor.

III. 1990-1992: A TIP OF THE CAP

A. 1990 Budget Session

The Legislature approved the reorganization plan for the Department of Employment in 1990.[116] The Legislature worried, however, over loss of local control and access arising from centralization of claims processing in the Division. As part of its approval of the reorganization plan, the Legislature directed the department to implement a pilot project whereby worker's compensation accident reports and claims could be filled out and processed locally.[117]

The Legislature also reacted positively to another Wyoming Supreme Court case. Shortly before the 1990 budget session, the court decided *Jackson v. State ex rel. Wyoming Workers' Compensation Division.*[118] The court ruled that the Office of Independent Hearing Examiners, created to decide contested cases, did not have the authority to determine those cases by summary judgment.[119] In response, the Legislature specifically amended the Act to allow hearing examiners the power to decide cases in accordance with the Wyoming Rules of Civil Procedure as made applicable under the Rules of the Office of Administrative Hearings.[120] The court approved this extension of authority several years later in *Neal v. Caballo Rojo, Inc.*[121]

B. 1991—The Cap is Raised

In the 1991 general session, the Legislature adopted a "go slow" attitude when it came to enacting worker's compensation legislation with two major exceptions. The Legislature phased in an increase in the ceiling on employer premium rates from 5.5% to 6.5% for calendar year commencing January 1, 1992; 7.5% for calendar year commencing January 1, 1993; and 8.5% for calendar year commencing January 1, 1994.[122] The Legislature also adopted standard industrial classifications to determine an employer's status as extrahazardous rather than referring to individual business and occupation titles.[123]

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116. 1990 Wyo. Sess. Laws ch. 63.
117. *Id.* at ch. 63, § 1(a)(ii).
118. 786 P.2d 874 (Wyo. 1990).
119. *Id.* at 878.
120. 1990 Wyo. Sess. Laws ch. 88.
121. 899 P.2d 58 (Wyo. 1985).
122. 1991 Wyo. Sess. Laws ch. 219 (codified at WYO. STAT. ANN. § 27-14-201(c) (Michie 1977 & Supp. 1991)).
123. *Id.* at ch. 190 (codified at § 27-14-108(a)). Minor additional bills expanded the definition of

Together with the 12% surcharge approved in 1989, the incremental lifting of the cap on employer premiums went a long way toward correcting the Division's precarious financial situation. In fiscal year 1990, the first year that the surcharge was in effect, the Division collected over $16 million more in employer premiums than in the previous fiscal year.[124] By the end of fiscal year 1991, the worker's compensation system actually netted a profit of $1.78 million and paid back more than $2.5 million in loans.[125] The pattern of increasing premium payment collections continued during fiscal year 1992 when the Division collected nearly $70 million in employer premiums.[126] However, due largely to a $4 million loan repayment in December of 1991, the Division lost money in fiscal year 1992.[127] By the end of fiscal year 1993, the Division again showed net income from that year's operations despite paying off a little more than $1 million in loans.[128] In November of 1993, the Division paid off the remaining loan balance of $1.22 million. Net income for fiscal year 1994 was $23.65 million.[129]

C. *1992 Budget Session—The Calm Before the Storm*

The lack of legislative action on worker's compensation issues during the 1992 budget session could perhaps be attributed to the Legislature's preoccupation with reapportionment.[130] However, one minor change planted the seed for one of the most divisive issues considered the following year. The Legislature created the Office of Administrative Hearings as a separate operating agency to replace the Office of Independent Hearing Examiners.[131] To head the new agency the Governor was to appoint, with the advice and consent of the Senate, a director to serve as administrative head and chief hearing examiner.[132]

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artificial replacement, *id.* at ch. 141, and allowed the Division to distribute the cost of benefits for successive compensable injuries for which no single employer could be determined to be chargeable, across the entire general industrial classification. *Id.* at ch. 90. The Division was also given the power to bring a civil action to recover benefits which had been paid due to mistake, misrepresentation or fraud. *Id.* at ch. 131.

124. Mueller Letter, *supra* note 21. Fiscal year 1989 employer premiums totaled $28,758,795; the fiscal year 1990 total was $44,792,903. *Id.*

125. *Id.*

126. *Id.* The total premium collections were $69,337,264. The ceiling employer premium increased to 6.5% effective January 1, 1992. 1991 Wyo. Sess. Laws ch. 219.

127. Mueller Letter, *supra* note 21. The total loss for operations in 1992 was $1,655,024. *Id.*

128. *Id.* Net income for fiscal year 1993 was $1,358,607. *Id.*

129. *Id.*

130. 1992 Wyo. Sess. Laws ch. 1.

131. *Id.* at ch. 30, § 1 (codified at WYO. STAT. ANN. § 9-2-2201(a) (Michie 1977 & Supp. 1992)).

132. *Id.* (codified at § 9-2-2201(b)). In addition to hearing contested worker's compensation cases, the Office of Administrative Hearings was empowered to hear appeals arising under the motor vehicle code and to provide hearing services for other state agencies upon request. *Id.* (codified at § 9-2-2202(a)(ii), (b)).

IV. THE 1993 REFORMS—CONTINUING SAGA OF CO-EMPLOYEE IMMUNITY

A. The Floodgates Open

The Legislature passed eighteen worker's compensation bills during the 1993 general session.[133] Bills relating to Division financing included one which extended the agency's borrowing authority from the pooled investments fund from $20 million to $25 million.[134] The Division was authorized to spend up to $150,000 to conduct risk management audits and audits of payroll reports submitted by employers covered by the Act.[135] Certain administrative functions including payroll auditing, claims investigations, case management, legal services and loss prevention services were privatized, with the Division authorized to enter into contracts with the appropriate private sector providers for provision of those administrative functions.[136] The Legislature mandated that an actuarial audit of the Act be conducted for use by the Joint Labor, Health and Social Services Interim Committee to develop recommendations for reform of worker's compensation before the 1994 budget session.[137]

In the areas of claims processing, the Legislature granted the Division broad investigatory powers, including the right to conduct discovery pursuant to the Wyoming Rules of Civil Procedure if the administrator had reason to believe that an employee, employer, health care provider or any representative thereof had violated the act.[138]

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133. Minor amendments allowed the Division to share information obtained in administering the worker's compensation program with certain agencies, law enforcement authorities, and the state auditor, and to maintain all filed documents in a computer imaging system. 1993 Wyo. Sess. Laws chs. 28, 32. Also the incremental increase of employer premium ceilings for governmental employers was changed to a fiscal year basis rather than calendar year (*id.* at 96); coverage was extended to employees of qualified residents temporarily working in Canada and Mexico (*id.* at ch. 113); certain governmental employees erroneously left out of the definition of extrahazardous employment were added back in (*id.* at ch. 122); nonresident employer bonding requirements were increased (*id.* at ch. 163); the Division was authorized to suspend temporary total disability benefits in the event an injured employee failed to appear at scheduled medical and therapy appointments (*id.* at ch. 205); employer coverage was expanded to include probationers and parolees, while beauty shops and barbershops were eliminated from the definition of extrahazardous employments (*id.* at ch. 216); and the Legislature allowed the Division and employers to require a second opinion from a health care provider of their choice concerning diagnosis, prognosis and treatment including requiring a functional capacity exam of the injured employee. *Id.* at ch. 157.

134. *Id.* at ch. 37. The Legislature required repayment of the loan with interest in full by July 1, 1999. *Id.*

135. *Id.* at ch. 149.

136. *Id.* at ch. 179.

137. *Id.* at ch. 178.

138. *Id.* at ch. 35. Certain violations, such as knowingly making misrepresentations or false statements for the purpose of obtaining benefit payments of more than $500, or making false statements in employer payroll reports to avoid payment of employer premiums of more than $500, became felonies punishable by a fine of not more than $10,000, imprisonment for not more than 10 years, or both. *Id.* at ch. 176.

The Legislature also created the Wyoming Worker's Compensation Medical Commission (Medical Commission) consisting of health care providers appointed by the Governor.[139] The Commission's duties included:

> 1) The duty to promulgate rules and regulations, with the approval of the Director of the department, declaring particular medical, hospital or other health care procedures either acceptable or not necessary in the treatment of injuries or particular classes of injuries and therefore either compensable or not compensable under the Act or expanding or limiting the compensability of such procedures;[140]
>
> 2) The duty to promulgate rules and regulations establishing criteria for certification of temporary total disability and setting forth types of injuries for which particular health care providers could certify temporary total disability;[141] to advise the Division on the usefulness of medical costs containment measures;[142] and
>
> 3) The duty to provide Commission members to serve on three member hearing panels to hear medically contested cases.[143]

The Office of Administrative Hearings no longer had exclusive jurisdiction to hear contested worker's compensation cases. The Division's decision whether to refer the case to that office or to a medical hearing panel was not subject to further administrative review. The Medical Commission was unique among the states. It provided for hearing panels consisting of health care providers acting as hearing officers on medically contested claims. Cases in which the issues involved the extent of permanent physical impairment or whether an injured worker was permanently totally disabled were specifically defined as medically contested claims.[144]

B. Co-employee Immunity

The Legislature also revisited the issue of co-employee immunity, broadening that immunity except in cases where a co-employee intended to cause physical harm or injury to the injured employee.[145] The legislation followed a series of court cases and legislative responses to those cases. In 1974, the Wyoming Supreme Court in *Markle v. Williamson*[146] first recognized that in-

139. *Id.* at ch. 229 (codified at WYO. STAT. ANN. § 27-14-616(a) (Michie 1977 & Supp. 1993)).
140. *Id.* (codified at § 27-14-616(b)(i)).
141. *Id.* (codified at § 27-14-616(b)(ii)).
142. *Id.* (codified at § 27-14-616(b)(iii)).
143. *Id.* (codified at § 27-14-616(b)(iv)).
144. *Id.* at ch. 229, § 2 (codified at §§ 27-14-405(e), 406).
145. *Id.* at ch. 47 (codified at § 27-14-104(a)).
146. 518 P.2d 621 (Wyo. 1974).

jured employees covered under the Act retained their common law right to sue co-employees. The court rejected as a "bald-faced fiction" the argument that co-employees had become merged with the employer and therefore not third persons for purposes of immunity from suit.[147] The court noted that the Legislature specifically reserved to the injured workmen and to the heirs of deceased employees, their common law rights of action against third persons.[148]

The Legislature responded, first limiting co-employee liability to gross negligence,[149] and later, culpable negligence.[150] Ultimately, as part of the 1986 recodification, the Legislature extended absolute immunity to co-employees.[151] In *Meyer v. Kendig*,[152] the court upheld the constitutionality of granting immunity to co-employees unless they were culpably negligent. A challenge to the constitutionality of absolute co-employee immunity found its way before the court in 1991. In *Mills v. Reynolds I*,[153] the court found that extending absolute immunity protection to co-employees was constitutional and that the Legislature had the power to eliminate the entire class of actions. However, after granting a petition for rehearing, the court reversed its course and in *Mills v. Reynolds II*,[154] found that absolute immunity infringed upon the fundamental right of access to the courts and resulted in a denial of equal protection to workers injured as a result of the wrongful acts of their co-employees. The decision that absolute co-employee immunity was unconstitutional applied retroactively and the court tolled the statute of limitations until the date of its decision.[155]

The Legislature reacted by granting co-employees immunity with the limited exception of acts intended to cause physical harm or injury to the injured employee.[156] In *Copp v. Redmond*,[157] the court held that the effect of the *Mills II* holding was to reinstate the culpable negligence standard between the July 1, 1987 effective date of the repeal of the "culpable negligence" language and the most recent amendment which went into place on February 18, 1993. In his dissent, Justice G. Joseph Cardine noted that the Legislature, when it provided for absolute immunity in 1989, did not provide for revival of any predecessor statute in the event any portion was declared unconstitutional.[158] In

147. *Id.* at 624.
148. *Id.*
149. 1975 Wyo. Sess. Laws ch. 149.
150. 1977 Wyo. Sess. Laws ch. 142.
151. 1986 Wyo. Sess. Laws, Spec. Sess., ch. 3.
152. 641 P.2d 1235 (Wyo. 1982).
153. 807 P.2d 383 (Wyo. 1991), *rev'd*, 837 P.2d 48 (Wyo. 1992).
154. 837 P.2d 48 (Wyo. 1992).
155. *Id.* at 56.
156. 1993 Wyo. Sess. Laws ch. 47. The Wyoming Supreme Court has not decided the constitutionality of this limitation on suits against co-employees.
157. 858 P.2d 1125 (Wyo. 1993) (Cardine, J. dissenting).
158. *Id.* at 1128-30 (citing WYO. STAT. ANN. § 8-1-106 (Michie 1977) which provides that "[i]f any

Justice Cardine's view, if the constitutional amendment was necessary to abrogate a worker's right to recover from his employer for his injuries during his employment, so too a constitutional amendment would be necessary to abrogate his right to sue someone other than his employer for such injuries including co-employees.[159]

C. *A Veto and its Aftermath*

The Legislature also passed a bill which would have had the effect of equating permanent disability with permanent physical impairment as defined under the *AMA Guides to the Evaluation of Permanent Impairment.*[160] Governor Mike Sullivan vetoed the bill noting:

> The legislation equates a worker's compensation "disability" claim with the cold, unadulterated physiological "impairment" of the body and grants an award based upon that percentage impairment. The "impairment" is determined by the American Medical Association Guidelines. I am unable to find anywhere the suggestion that the AMA Guidelines for "impairment" have any substantive relationship with a worker's ability to perform or retain employment for which he is suited by experience, education or training. In other words, the loss suffered.
>
> Constitutionally, Wyoming's compensation system, as are most others, is founded on the premise that "compensation from the fund shall be in lieu of and shall take the place of any and all rights of action against an employer." Thus, the employees, for the certainty of care and compensation in a no-fault system, relinquish significant basic rights to which they may otherwise be entitled. Underlying all of this is the concept of "disability" compensation. It rests on the premise that the primary consideration is not medical "impairment but "disability," i.e., the impact of an impairment on the capacity of an employee to perform work. Factors which have traditionally been considered when making that determination include:
>
> a) "impairment," i.e., the extent of injury (AMA Guidelines);
>
> b) age of the worker;
>
> c) education of the worker;

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law is repealed which repeals a former law, the former law is not thereby revived unless it is expressly provided." The majority did not cite this section.).

159. *Id.* at 1130.

160. S. 93, 52nd Leg. (Wyo. 1993).

d) ability to continue pre-injury employment;

e) post-injury employment prospects;

f) pre-injury earnings;

g) post-injury earnings.

All of these factors would ordinarily be considered together in assessing "disability" and the consequences of disability. This legislation removes all the factors but "impairment," thereby removing any objective assessment of the injuries impact and imposing an artificial standard of "impairment" which does not assess nor can it assess, the human or individual consequences of the injury.[161]

The chairman of the Senate Labor, Health and Social Services Committee, Senator Charles Scott, criticized Governor Sullivan's veto of the bill. Scott claimed that Sullivan had yielded to pressure from trial lawyers and labor unions.[162] Scott also claimed that if the Governor's veto stood it would "almost guarantee a major rate increase in employer premiums next year."[163]

An effort to override Governor Sullivan's veto ultimately failed in the House after passing the Senate on a straight party line vote.[164] Shortly after the Legislature adjourned, Dr. Allen L. Engleberg, chief editor of the *AMA Guides to the Evaluation of Impairment,* wrote to Governor Sullivan to congratulate him for "putting your foot down and stopping a law that would use the book in a way for which it was not intended."[165]

D. The Legislature Rejects Independence and Integrity

Gerald F. Murray, former prosecuting attorney for Goshen County, was Governor Sullivan's choice to head the Office of Independent Hearing Officers created by the 1986 recodification. As a result of legislation passed in 1992, Murray came before the Senate near the end of the 1993 general session for approval of his appointment as director of the renamed Office of Administrative Hearings.[166] The Senate Labor, Health and Social Services Committee held a hearing on Murray's nomination in late February. All of the witnesses spoke in favor of Murray's nomination during their testimony before the Committee.[167] Nonetheless, the Committee, on a straight party line vote of 3-2,

161. Veto message from Governor Michael Sullivan, February 27, 1993.
162. CASPER STAR-TRIBUNE, March 2, 1993, A-3.
163. *Id.*
164. Senate Journal, 52nd Leg. 298-99 (Wyo. 1993).
165. Letter from Allen L. Engleburg, M.D., editor, *AMA Guides to the Evaluation of Impairment,* to Michael Sullivan, Governor of Wyoming, March 30, 1993.
166. Senate Journal, 52nd Leg. at 19-20.
167. CASPER STAR-TRIBUNE, February 25, 1993, A-3.

recommended that Murray not be confirmed.[168] Opposition to Murray's appointment was led by the committee chairman, Senator Scott, who claimed that Murray was operating the Office of Administrative Hearings as though it were part of the judicial branch rather than the executive branch.[169] Anther member of the Committee, Sen. Mark Harris, a Sweetwater County Democrat, attributed the opposition to Murray's appointment to a "turf battle" between the Office of Administrative Hearings and the Worker's Compensation Division.[170] Ultimately, the Senate voted to reject Murray's nomination on a vote of 14-16.[171] Senator Scott, who also led the opposition to Murray's nomination on the Senate floor, acknowledged that Murray was a man of "the highest integrity" but stated that his administration of the Office of Administrative Hearings resulted in a record of inconsistency.[172] Senator Carroll Miller, one of four Republicans who voted for Murray's appointment, attributed the failure to confirm to the "famous unsworn testimony that goes on."[173]

Joan Barron, the Casper Star-Tribune's long time capitol city reporter, characterized the Murray hearings as "a surreal experience."[174] Noting the uniformly favorable testimony and Murray's unquestioned professional and personal integrity, Barron concluded that "the Murray hearings and the outcome were outrageously unjust."[175] The message was clear—Murray had angered the Division by providing workers due process, including impartial tribunals in contested worker's compensation hearings. He was too independent and had too much personal integrity to be confirmed.

V. THE 1994 WORKER'S COMPENSATION REFORM ACT

A. The Cap is Lifted and A Price is Paid.

Unlike the 1993 general session in which no fewer than 39 separate bills were filed,[176] the 1994 Legislature enacted only a single bill catch-titled "Worker's Compensation Reform" (Reform Act).[177] At long last the Legislature agreed to a phased-in removal of the ceiling on employer premium rates.[178] The Division no longer had to obtain Insurance Department approval of its proposed rates; however, it was required to submit annual reports with respect

168. Senate Journal, 52nd Leg. at. 42-43.
169. CASPER STAR-TRIBUNE, February 25, 1993, A-3.
170. *Id.*
171. Senate Journal, 52nd Leg. at 43.
172. CASPER STAR-TRIBUNE, March 2, 1993, A-8.
173. *Id.*
174. Joan Barron, *Confirmation or "Kangaroo Hearing"?*, CASPER STAR-TRIBUNE, March 21, 1993, A-8, C-2.
175. *Id.*
176. CASPER STAR-TRIBUNE, February 28, 1993.
177. 1994 Wyo. Sess. Laws ch. 86.
178. *Id.* § 2 (codified at WYO. STAT. ANN. § 27-14-201 (Michie 1977 & Supp. 1994)).

to proposed annual rate adjustments to the Joint Labor, Health and Social Services Interim Committee prior to the rates going into effect.[179]

The agreement to raise the ceiling on employer premium rates came with a heavy price tag in the form of reduced disability benefits and additional procedural hurdles for injured workers to face.

After July 1, 1994, the Reform Act required injured workers whose injuries left them incapable of going back to their normal occupation, to accept either limited vocational rehabilitation benefits[180] or permanent partial disability benefits. Permanent partial disability was determined on the basis of a statutory formula which awarded a certain number of months worth of benefits depending on:

1) age at the date of injury;

2) number of years of education completed beyond the 12th grade;

3) number of different occupations worked for at least 18 months in the eight year period preceding the injury;

4) whether the employee at the time of the injury was engaged in a formal education or training program; and

5) if the employee was 45 years or older.[181]

However, to qualify for an award of additional permanent disability benefits in addition to the amounts awarded for physical impairment, injured employees would have to prove that because of the injury:

1) they were unable to return to employment at a comparable or higher wage than the wage they were earning at the time of injury; and

2) that they had actively sought suitable work considering their health, education and experience.[182]

In addition, they had to file timely applications for such awards.[183] Similarly, employees seeking to apply for the vocational rehabilitation benefit had to establish that:

1) their injury would prevent them from returning to any occupation for

179. *Id.*
180. *Id.* § 1 (codified at § 27-14-408).
181. *Id.* § 2 (codified at § 27-14-405).
182. *Id.*
183. *Id.*

which they had previous training and experience and in which they were gainfully employed at any time during the three year period before the injury; and

2) that they had not been previously granted awards for vocational disability.[184]

The Reform Act also required an eligible employee to submit a written election agreeing to accept vocational rehabilitation instead of permanent partial disability benefits.[185] The formula for determining the amount payable in permanent disability benefits changed from two-thirds of the state's average monthly wage for twelve months immediately preceding the quarterly period in which the injury occurred,[186] to a formula based on the employee's actual monthly earnings capped at the state's average monthly wage at the time of injury.[187]

The Reform Act added new exclusions to the definition of injury. Mental injuries were excluded unless caused by a compensable physical injury and proven by clear and convincing evidence, including diagnosis by a licensed psychiatrist or licensed clinical psychologist meeting criteria established by the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.[188] Benefits for mental injuries induced by trauma were limited in duration to a maximum period of no more than six months after the injured employee's physical injury had healed to the point it was not reasonably expected to substantially improve.[189] Injuries resulting primarily from the natural aging process or from the normal activities of day-to-day living, as established by medical evidence supported by objective findings, were also excluded.[190] Finally, the Reform Act excluded coverage for any injury sustained while engaged in recreational or social events which the employee was not required to attend, and where the injury did not result from the performance of tasks related to his normal job duties or those specifically ordered by the injured worker's employer.[191]

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184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.* (codified at § 27-14-102(J)). *See* Drake v. Consolidated Freightways, 678 P.2d 874 (1984) (non-traumatically caused mental injury is compensable if it arises from a situation or condition of employment that is greater in magnitude than the day to day mental stress of employment); and Frantz v. Campbell Cty. Memorial Hospital, 932 P.2d 750 (Wyo. 1997) (exclusion of non-traumatically caused mental injury constitutional).
189. *Id.*
190. *Id.*
191. *Id.* (codified at § 27-14-102(H)).

B. Liberal Construction is Dumped

In defiance of an unbroken line of Wyoming Supreme Court's holdings that the Act was to be given a liberal construction in light of its beneficent purpose,[192] the Legislature added a statement of intent. It directed that benefit claims cases be decided on their merits and that the common law rule of "liberal construction," based upon the "supposed remedial basis" of worker's benefits legislation shall not apply.[193] The Legislature further declared that the Act was not remedial in any sense and not to be given a broad liberal construction in favor of any party.[194]

VI. POST REFORM CHANGES

The pattern of decreasing benefits along with increasing procedural claim-filing hurdles, continued over the course of the next three years. At the same time, the Division's authority and responsibilities increased. In general, the Legislature eroded the rights of injured claimants and institutionalized a framework for managed care of worker's compensation injuries.

A. 1995

The 1995 general session enacted seven bills dealing with worker's compensation issues. One bill addressed returning workers to the workplace as quickly as possible by authorizing all employers to offer temporary light duty work.[195] Previously, the Legislature had authorized a pilot project which allowed participating employers to pay reduced temporary partial disability to injured workers who were allowed to work at reduced hours or in light duty positions while recovering from their injuries.[196] The temporary partial disability program was supported by several studies which concluded that the longer an injured worker stays away from work the greater the amount of worker's compensation claim costs, and the less likely the worker will be to return to a comparable earnings level. The new legislation authorized all employers to make written offers of temporary light duty to injured workers specifying the job duties, wage, and functional capacity requirements of the light duty work.[197] To qualify under the statute, the temporary light duty work must: 1) pay at least two-thirds of the employee's regular pay; 2) not unreasonably hinder or endanger recovery from the injury; and 3) not interfere with the em-

192. Zancanelli v. Central Coal and Coke Co., 173 P. 981 (1918); *see* 7 WEST'S WYOMING DIGEST §§ 48-51 (1956 & Supp. 1998).

193. 1994 Wyo. Sess. Laws ch. 86, § 1 (codified at WYO. STAT. ANN. § 27-14-101(b) (Michie 1977 & Supp. 1994)).

194. *Id.*

195. 1995 Wyo. Sess. Laws ch. 100 (codified at § 27-14-404(j) (Michie 1977 & Supp. 1995)).

196. 1992 Wyo. Sess. Laws ch. 73.

197. 1995 Wyo. Sess. Laws ch. 100 (codified at § 27-14-404(j)).

ployee's participation in any retraining program or additional education designed to allow the employee to return to work in a new occupation.[198]

If accepted, the amount received by the injured worker in temporary total disability benefits would be reduced by two-thirds and the balance of the award would not be charged against the employers experience rating.[199] If rejected, the amount paid for temporary total disability would still be reduced with no adverse effect on the employer's experience rating.[200]

In recognition of fundamental changes made in the 1994 Reform Act, the Legislature adopted a bill clarifying that the 1994 amendments applied only to injuries occurring after July 1, 1994.[201] Injuries which occurred before July 1, 1994 continued to be subject to the provisions of the prior statutes.[202] However, the following year the Legislature passed a bill[203] in which it apparently intended to reverse the decision of the Wyoming Supreme Court in *Starr v. Sunlight Ranches.*[204] In *Starr,* the court held that the Medical Commission lacked subject matter jurisdiction to hear medically contested cases arising out of injury claims which pre-dated the creation of the Medical Commission. *Starr* recognized that a claimant's right to a hearing before the Office of Administrative Hearings was a substantive right and was fixed at the time of the injury.[205]

Legislators also approved a joint reporting system which allowed employers to file a single report for payment of both worker's compensation premiums and unemployment insurance taxes.[206] Under the new reporting system, legislators gave the Division discretion to allow employers to file their payroll reports on a quarterly rather than monthly basis, provided employers demonstrated diligence in prior reporting of premiums and were not delinquent in reporting or making payments under the act.[207] In an attempt to reduce the number of cases heard in contested case proceedings, the legislature authorized the Division and employers to reach settlements with claimants allowing for payment of up to $2,500 in claims without having to admit an injury was work

198. *Id.* (codified at § 27-14-404(j)(i), (iv), (vi)).
199. *Id.* (codified at § 27-14-404(j)).
200. *Id.*
201. *Id.* at ch. 2.
202. *Id. See In re* Worker's Compensation Claim of Jacobs, 924 P.2d 982, 984 (Wyo. 1996) (worker's compensation claims, including the nature and amount of benefits, are governed by laws in effect at the time of the injury).
203. 1996 Wyo. Sess. Laws ch. 82, § 3 (codified at WYO. STAT. ANN. § 27-14-802(d-e) (Michie 1977 & Supp. 1996)).
204. 890 P.2d 1096 (Wyo. 1995).
205. *Id.* at 1096.
206. 1995 Wyo. Sess. Laws ch. 121.
207. *Id.* (codified at WYO. STAT. ANN. § 27-14-202(b) (Michie 1977 & Supp. 1995)).

related or that the claims were compensable.[208] For the first time employers' attorneys fees could be paid out of the worker's compensation account if the employer prevailed at a contested case hearing where the issue was the compensability of an injury.[209]

Legislators also expanded the Division's powers in the area of third party actions.[210] The Act had long recognized that in the event an injured worker was successful in pursuing a claim against a third party, the injured worker would be required to reimburse the Division for a portion of the benefits received.[211] As part of the 1986 recodification, the state's right of repayment extended not only to repayment of benefits paid on behalf of the injured worker, but also all future benefits.[212] The 1986 Legislature capped the total amount of the state's lien at one-third of the total amount of recovery. The Legislature that year also gave the Division discretion to accept less than the entire amount of the state's claim for reimbursement.[213] The 1995 Legislature amended the reimbursement statute to require third parties or their insurers to notify the state of any proposed settlement and to give the Division ten days in which to object to the proposed settlement.[214] If notice was not provided, the state would be entitled to initiate an independent action against the third party or the third party's insurer to collect all payments made or to be made on behalf of the injured worker.[215]

Additionally, the Division, upon the unsolicited written request of an injured worker or a deceased worker's estate, was empowered to commence a third party action on behalf of the employee or the employee's estate.[216] In the event the injured worker or his estate did not initiate a third party claim before the statute of limitations ran, the Division would have the right for an additional six months to initiate such an action on behalf of the employee or the employee's estate.[217] As of January 20, 1998, the Division had actively involved itself in third party litigation on only three occasions.[218]

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208. 1995 Wyo. Sess. Laws ch. 172 (codified at § 27-14-601(e)).
209. *Id.* at ch. 193 (codified at § 27-14-615).
210. *Id.* at ch. 183.
211. *See* Brown v. State ex rel. Morgan, 334 P.2d 502 (Wyo. 1959).
212. WYO. STAT. ANN. § 27-14-105(a) (Michie 1977 & Supp. 1987).
213. *Id.* § 27-14-105(b).
214. 1995 Wyo. Sess. Laws ch. 183, § 1 (codified at WYO. STAT. ANN. § 27-14-105(b) (Michie 1977 & Supp. 1996)).
215. *Id.* The Division has never exercised this authority and generally does not involve itself in settlement negotiations. Telephone Interview with Gerald W. Laska, Senior Assistant Attorney General, State of Wyoming (January 20, 1998) [hereinafter Laska Interview].
216. 1995 Wyo. Sess. Laws ch. 183, § 1 (codified at § 27-14-105(e)).
217. *Id.* (codified at § 27-14-105(f)).
218. Laska Interview, *supra* note 216.

B. Goodbye to the Clerks

The Legislature approved the final step in the centralization of claims processing and filing of claims in 1996.[219] As part of a comprehensive worker's compensation amendment bill, the Legislature transferred all remaining duties and responsibilities of the district court clerks to the Division.[220] The 1996 amendment also established a two year limit on the receipt of temporary total disability benefits with the Division having discretion to extend such benefits in extraordinary circumstances.[221] The Division's decision to either grant or refuse to grant such additional benefits was reviewable only for an abuse of discretion rather than in a *de novo* contested case hearing.[222]

To obtain benefits, injured workers had additional procedural hurdles to surmount. Within seventy-two hours after an injury, legislation required an injured worker to submit a *written* report to their employer concerning the occurrence and general nature of the accident or injury.[223] The Legislature also limited an injured worker's ability to obtain appointed legal representation. The Legislature provided for a "small claims procedure" in cases where the total amount of claims at issue were less than $2,000 and did not involve compensability of the injury.[224] Under this procedure, the Division determines in the first instance whether or not a case should be referred for a full-fledged contested case hearing or small claims proceeding.[225] Without the assistance of an appointed attorney or the involvement of the Attorney General's office, parties must decide within fifteen days whether to object to the claim being decided under the small claims procedure. If objected to, the hearing officer must review the file and determine if a small claims hearing is appropriate or if a contested case hearing is necessary or appropriate. If the case proceeds as a small claims hearing, the parties are required to submit written evidence and materials for the hearing officer's consideration.[226] The hearing officer is given discretion whether to hold any type of hearing and can render a decision based solely upon the written materials submitted by the parties.[227]

In 1997, the Legislature enacted similar authority for the Division to use a "small claims procedure" in medically contested cases before the Medical Commission.[228] Instead of a panel of three health care providers deciding the

219. 1996 Wyo. Sess. Laws ch. 82.
220. *Id.* at ch. 82, § 4; *see* WYO. STAT. ANN. § 27-14-802 (Michie 1997).
221. *Id.* § 1 (codified at § 27-14-404(a) (Michie 1977 & Supp. 1996)).
222. *Id.*
223. *Id.* (codified at § 27-14-502).
224. *Id.* (codified at § 27-14-602(b)(i)).
225. *Id.*
226. *Id.*
227. *Id.*
228. 1997 Wyo. Sess. Laws ch. 177 (codified at § 27-14-602(b) (Michie 1997)).

case, a single health care provider now acts as the hearing examiner in a medically contested small claim.[229]

C. *1997: Setting the Stage for Managed Care*

The 1997 Legislature further established the groundwork for instituting a system of managed care for worker's compensation injuries by granting the Division the authority to engage in contracts for medical bill review programs, medical case management programs, and utilization review programs.[230] According to Division data, the agency saved a total of $12,216,800 in fiscal year 1996 alone as a result of auditing medical claims and of medical case management.[231] This data is suspect and is likely inflated. Providers of medical case management services arbitrarily assign savings values to certain services without any rational basis or justification for the values selected. For example, vocational evaluation reports which find that injured employees have not sustained a reduction in their earning capacity are valued at $20,000 worth of savings to the Division. The Division uses these reports to support final determinations which deny claims for permanent disability benefits and for determining percentages awarded for permanent physical impairment ratings.[232] Employees are not required to (and, in the author's opinion, should not) accept those determinations and can request a contested case hearing to resolve the issue. The costs of the hearing and the average amount of the awards made in the event of a hearing are not reflected in the Division's figures.

VII. CRUNCHING THE NUMBERS

Each year since the beginning of fiscal year 1991, the total amount the Division has collected in employer premiums has exceeded the total amount paid in claims.[233] Where once the worker's compensation program owed $17 million in loans, it now has more than $203 million in reserves.[234] Statewide average employer premiums have risen only marginally from 2.42% in fiscal year 1992, to 2.94% for fiscal year 1997, after reaching a peak of 3.5% in fiscal year 1994.[235] Overall worker's compensation premium rates decreased in

229. *Id.* (codified at § 27-14-616(b)(iv)).

230. *Id.* (codified at § 27-14-401(g)).

231. JIM BOREING, ASST. ADMINISTRATOR, CLAIMS UNIT, DEPT. OF EMPLOYMENT, WORKER'S SAFETY AND COMPENSATION DIV. STATISTICS (data last modified on May 21, 1997).

232. Case Management Costs Savings Closure Report Summaries by CRA Managed Care, Inc. (on file with the *Land and Water Law Review*).

233. Mueller Letter, *supra* note 21.

234. Press Release by Governor Jim Geringer, September 6, 1997 [hereinafter Press Release].

235. 1997 STATE OF WYOMING DEPARTMENT OF EMPLOYMENT ANN. REP. TO JOINT LABOR, HEALTH AND SOCIAL SERVICES INTERIM COMMITTEE (Financial Status of Worker's Compensation and Unemployment Insurance funds and Worker's Compensation Employer Rates) [hereinafter ANNUAL REPORT].

1996 and 1997.[236]

A review of the financial data against the backdrop of the last twelve years of legislative action indicates that the single most important reason for this turnaround in the financial health of the system was the gradual lifting of the cap on employer premiums prior to the 1994 Legislature, which eliminated the cap entirely. Statewide average employer premiums since 1995 instead have decreased as a result of the Legislature halting the cross-industrial subsidization of industries having poor experience ratings by those businesses with better-than-average claims histories.[237] The reduction in employer premiums can also be partially explained by a reduction in the total number of compensable injuries since the high in fiscal year 1992 of 20,686 to 16,626 in fiscal year 1997.[238]

The removal of the ceiling on employer premiums, however, came at a price of decreased benefits to injured workers. In creating this situation, the Legislature has largely ignored the two most rapidly expanding areas of expenses incurred in operating the worker's compensation system—rapidly increasing medical expenses and operational costs within the Division.

236. Press Release, *supra* note 235.
237. ANNUAL REPORT, *supra* note 236.
238. Mueller Letter, *supra* note 21.

Financial data from the Division indicates that in fiscal year 1989, the total amount expended on medical claims costs was $23,457,051—a total of 51.3% of all claims paid that year.[239] The amount spent on medical claims has risen steadily, both in dollars and as a percentage of payments. In fiscal year 1997, 60.78% of the total amount of claims payments went for payment of medical expenses.[240] In contrast, according to the National Council on Compensation Insurance, nationwide medical expenses on the average represent approximately 40-45% of the cost of each worker's compensation injury, while indemnity benefits to injured workers represent the remaining 55-60%.[241]

Since fiscal year 1989, indemnity benefits for claims in Wyoming to injured workers and the families of deceased workers have declined steadily.[242] At the same time, administrative expenses have risen rapidly.[243] In addition to

239. *Id.*

240. The table below shows percentages of medical expenses to claims payments.

Fiscal Year	Amount of Medical Expenses	Total Claims Payments	% of Medical Expenses to Claims Payments	% Change in Total Medical Expenses from Preceding Fiscal Year
1989	$23,457,157.00	$45,608,312.00	51.43%	
1990	$27,442,003.00	$50,650,655.00	54.18%	17%
1991	$29,649,099.00	$56,824,326.00	52.8%	8%
1992	$35,236,121.00	$65,174,398.00	54.06%	18.8%
1993	$41,454,273.00	$74,839,627.00	55.39%	17.6%
1994	$41,955,169.00	$76,114,698.00	55.85%	1.2%
1995	$46,502,553.00	$79,722,240.00	58.33%	10.8%
1996	$40,306,396.00	$71,491,522.00	56.38%	-13.3%
1997	$41,270,506.00	$67,899,151.00	60.78%	2.4%

241. JOHN S. PENSHORN AND RUSSELL JOHNSON, PIPER/JAFFRAY, WORKER'S COMPENSATION & MANAGED CARE ON THE JOB 6-7 (1997).

242. Mueller Letter, *supra* note 21. The table below shows indemnity benefit percentages.

Fiscal Year	Indemnity % of Total Payments	TTD % of Total Claims	PTD, PPD and Other Indemnity Claims % of Total Claims
1989	47.24%	23.95%	23.29%
1990	44.67%	24.51%	20.16%
1991	45.68%	26.92%	19.76%
1992	44.84%	23.44%	21.40%
1993	43.34%	22.29%	21.05%
1994	42.14%	22.06%	20.08%
1995	39.84%	19.73%	20.11%
1996	41.92%	18.91%	23.01%
1997	39.22%	16.87%	22.35%

243. *Id.*

the purely administrative costs within the Division itself, Office of Administrative Hearings and Medical Commission expenses are also paid out of the worker's compensation account.[244]

VIII. CONCLUSION

Overall, the revisions made to the Wyoming worker's compensation system have resulted in its movement further away from meeting the essential elements of worker's compensation coverage recommended by the National Commission on State Worker's Compensation Laws in 1972.[245] While the total number of industries covered by worker's compensation has grown as a result of the constitutional amendment allowing non-extrahazardous employers to opt into the system, not all employers are covered. The extent of coverage of work-related diseases and injuries has eroded while physical disability benefits have been arbitrarily limited. The Legislature has curtailed an injured worker's common law right to bring a cause of action against a co-employee while at the same time it has kept constant the scope of employer immunity. Perhaps most concerning is the reduction in injured workers' benefits and rights against the background of a multiplication of procedural bars to legitimate claims for benefits. It is time that we look back and heed the admonition of Governor Kendrick to the Legislature in 1915 when he stated:

> I would recommend in framing such a law, that due care be exercised to fulfill every function contemplated, that every provision be included to render just compensation to the injured, or, in case of death, those dependent upon him, but at the same time such a law should be calculated so far as possible, to avoid the working of a hardship on the industry that pays the tax.[246]

Administrative convenience and the desire to keep premium rates as low

Fiscal Year	Total Operating Costs Excluding Loan Repayments	Total Expenses	Operating Costs as Percentage of Total Expenses
1989	$2,003,000.00	$47,814,739.00	4.9%
1990	$1,919,108.00	$52,896,258.00	3.6%
1991	$2,685,951.00	$62,127,838.00	4.3%
1992	$3,057,080.00	$73,553,057.00	4.2%
1993	$3.904,755.00	$81,347,221.00	4.8%
1994	$4,061,488.00	$80,935,592.00	5%
1995	$5,415,426.00	$85,637,324.00	6.3%
1996	$5,668,972.00	$77,697,723.00	7.3%
1997	$6,464,319.00	$77,191,998.00	8.4%

244. The table above shows Division operating expenses as a percentage of total expenses.
246. *See supra* note 18.
247. *See supra* note 8.

as possible should not be an impediment to an efficient and fair system of compensation. Trust in the compromise of providing fair and just compensation to workers injured in industrial accidents in exchange for grant of employer immunity inherent in Article X, § 4 of the Wyoming Constitution has been shaken. Creation of a financially successful bureaucracy is no excuse for failing to meet the voters' mandate for creation of a system which is fair to all involved. The "blood of the workmen" is a cost of production which should be born by industry, which can shift the burden of paying for those costs to the consumers of their products and services. Recent legislation has forgotten the need to balance "just compensation" with the need to "avoid the working of a hardship on industry" which finances the worker's compensation system.