100 Year Anniversary of Connecticut Workers' Compensation Act

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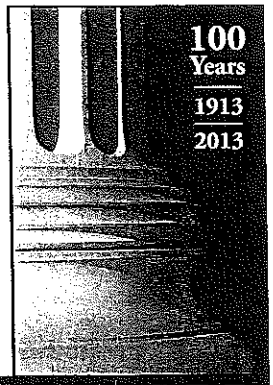

THE WORKERS' COMPENSATION UPDATE

100 Years of Workers' Compensation

by James L. Pomeranz

I. INTRODUCTION

This year marks the 100th anniversary of the passage of the Connecticut Workers' Compensation Act. Over the century the law, while evolving, has maintained many of its original tenets. The law imposes a no-fault system of recovery for workers with respect to industrial accidents. Now 100 years after its passage we often take for granted how revolutionary it was when initially passed. Prior to the legislation of workers' compensation laws in the United States, there had never been any legal basis for recovery without proof of fault. Therefore, it is appropriate to commemorate the 100 year anniversary of our workers' compensation law as a historic occasion.

That so many states passed workers' compensation laws in a ten year window in the early 20th Century demonstrates that the winds were blowing for social change in the workplace. Also, events like the terrible Triangle Shirtwaist Factory fire that occurred on March 25, 1911 in New York City, which took the lives of 146 victims, mostly girls from 16 – 23 years of age, resonated with law-makers. This tragedy was in the minds of the legislators, although the legislative history makes clear that these laws were passed not as an emotional and visceral reaction to the tragic fire, but rather as the culmination of a rational process that convinced legislators that workplace laws for industrial accidents needed to change.

II. EARLY HISTORY

The first workers' compensation acts were passed in Europe in the 19th Century. The very first such act was passed in Germany in 1884, and by 1903 almost all European countries had such a law. The law in Germany was a response to labor unrest. Under Emperor Wilhelm I and Chancellor Prince Otto von Bismarck, the law was passed by

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the Reichstag with the hope of discouraging employees from joining left wing parties.[1]

In the United States the first Worker Compensation Act passed in Maryland in 1902, but was declared unconstitutional.[2] In 1908 the Federal Workers' Compensation Act passed. This federal compensation law was upheld after judicial challenge and was followed by Wisconsin with the approval of its workers' compensation law on May 3, 1911.[3] Over the next ten years compensation acts were legislated in multiple states with Connecticut's law being passed in 1913, although not becoming effective until 1914.

III. ORIGINS AND BACKGROUND OF WORKERS' COMPENSATION

Prior to the passage of workers' compensation acts, fault was a prerequisite to the recovery of damages by the injured worker. Therefore, workers were forced to bring common-law actions against their employers to make a recovery for any occupational accident.

Common-law actions, however, faced extremely difficult obstacles:

a) the difficulty in sustaining the burden of proving the elements of a civil action;
b) the delay in obtaining any recovery; and,
c) the expense of pursuing a civil action.[4]

These difficulties were in fact enumerated in the first Connecticut case construing our Workers' Compensation Act. The Connecticut Supreme Court also pointed out moral considerations, such as the prevention of the tendency of some workmen to press unfounded claims and of others to exaggerate just claims and, at the same time, the tendency of some employers to defend claims by means of questionable fairness.[5]

In addition to the above problems confronting an employee pursuing a civil action, the employer had available defenses that routinely defeated any claim:

a) the fellow servant rule;
b) the assumption of risk rule; and,
c) the defense of contributory negligence.

The burden faced by an employee to recover in a civil action caused the Chief Justice of the Wisconsin Supreme Court to say:

> To speak of the common law personal injury action as a remedy ... is to jest with a serious subject, to give a stone to the one who asked for bread.[6]

These legal burdens in employer-employee litigation were inherited in the United States through the English common-law and generated disenchantment long prior to the introduction of legislation. The need for reform was born in the last half of the 19th Century. For instance, in 1867, the Connecticut Supreme Court questioned the fairness of the fellow servant defense:

> The justice of this reasoning has been questioned by high judicial authority...it is very doubtful whether, in fact, a spinner in a factory or a fireman on a railroad ever made an examination into the conditions of the machinery, the mode of conducting the business or the character and habits of the operatives for purposes of ascertaining the extent of his risk...

The Court commented further,

> It is by no means certain that the public interest would not best be served by holding the superior with his higher intelligence, sure means of information, and the power of selecting, directing and discharging subordinates, to the strictest accountability for their misconduct in his service...[7]

In 1898, the Supreme Court of Connecticut went further and referred to the fellow servant rule as evil: "...the evil is deep

1 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 239; Connecticut Practice Series, Workers' Compensation Law, Vol. 19 Chapter 1.
2 Franklin v. United Railways and Electric Co., 2 BALT.City.Rpts 309 (1904)
3 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 239; Industrial Commission of Wisconsin, Workman's Compensation, 31st report, July 1, 1960 – June 30, 1962.
4 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 240.
5 Powers v. Hotel Bond Company, 89 Conn. 143, 146 (1915).
6 Borgnis v. The Falk Company of Milwaukee, 147 Wis. 327, 133 NE. 209 (1911) (Chief Justice Winslow).
7 Burke v. Norwich and Worcester R. Company, 34 Conn. 474, 479-480(1867).

seeded to be remedied by judicial action. It needs radical treatment through wise legislation."[8] The Court noted that while the common law doctrine of a civil action necessarily requiring proof of fault was unfair to employees, nevertheless, any change required legislation and could not be remedied by judicial action.

Interestingly, the major industrialists at the turn of the century promoted the establishment of workers' compensation statutes on a state by state basis. The National Civic Foundation (NCF) was formed in 1900 and the American Association for Labor Legislation (AALL) was formed in 1906 to address labor issues and to promote the adoption of workers' compensation statutes.[9] Therefore, the support for a no-fault system replacing common law came from both labor and business.

In this setting, near the turn of the century, legislatures in the various states started to consider workers' compensation legislation with a flood of passages between 1908 and 1920.

IV. PASSAGE OF THE CONNECTICTUT WORKERS COMPENSATION LAW – 1913

Protests against the rules impeding the recovery for injured workmen ultimately led to the introduction of legislation. On February 27, 1907, the Governor by virtue of Senate Resolution 228, appointed a committee to investigate and report regarding legislation concerning the liability of employers. This first report did not come out until 1909 and recommended the elimination of the fellow servant rule regarding employees involved in the control of signal, switch, locomotive engine, train, or telegraph office upon a railroad. However, no comprehensive bill was proposed.[10]

The first Workers' Compensation Act was brought to vote in 1911 but was defeated in the House of Representatives primarily on account of farmers who feared its cost. Of course, this was a new bill with no past history, so its ultimate cost was a matter of great concern since there had been no underwriting experience.

In 1911 the Senate passed the proposed Workers' Compensation Act by 27 – 6, but the House ultimately defeated the bill with 144 nays, 46 yeas and 57 absentees. The defeat in the House was apparently quite colorful. An observer wrote of the vote:

> The scenes in the House on the day of the vote should be painted in colors of living feeling words so every man in the state and nation would know the conduct of the ones to whom his conduct he had delegated all of his political rights and law creating powers. The slamming of desks and covers came intermittently like volleys of miniature musketry. When the actual role was ordered, there was a scurry from the seats to quit the House amid laughter and boyish pranks, drowning the noise of the speaker's gavel wildly pounding for order. Then, safely in the lobby, they placed their leering faces to the glass of the door and brazenly laughed at their braver colleagues within, as though their chicanery and disgracefully deserting had spectacularly exalted them.[11]

Obviously, a large group of legislators agreed to be absent from the vote. The Hartford Daily Times wrote concerning this childish legislative irresponsibility that:

> When the Bill was dead as Caesar's ghost, Representative Candee of Easton, who was one of the active pallbearers, recalled that they had authorized the payment of $800.00 to Talcott H. Russell for drawing the Bill, and it pained him greatly. He was still philosophizing on the memory to the amusement of the House when the body was adjourned.[12]

Nevertheless, the workers' compensation legislation in fact was not dead. On August 22, 1911, the Senate Joint Resolution 248 was passed establishing a commission to investigate establishing state insurance for workmen. Governor Simion Baldwin appointed Mr. Talcott Russell of New Haven, Burton Mansfield, Insurance Commissioner, and Mr. John Eccles of Norwich as members of the Commission.[13]

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8 Nolan v. New York, New Haven, and Hartford R. Company, 70 Conn. 159, 195 (1898)(Justice William Hamersley).

9 Connecticut Practice Series, Workers Compensation Law, Vol. 19 Chapter 1.

10 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 242; Report, Committee Regarding Legislation Regulating the Liability of Employees (1909)

11 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 243, report of hearings before the State Commission on Industrial Insurance, New Haven, Connecticut March 18, 1912.

12 Hartford Daily Times, August 2, 1911, the House kicks out compensation bill.

13 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 244.

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Ultimately this committee recommended a workers' compensation law applicable only to a classified list of industries where it was felt special risks were involved. This version of the bill was never adopted.[14]

Surprisingly, a workers' compensation bill was passed by unanimous vote in the Senate and House in 1913 only two years later. This workers' compensation bill was the product of a committee consisting of Willard C. Fisher, acting for labor interests; Howell Cheney of Manchester, representing manufacturers; and Representative Hyde. The law was passed by unanimous vote of the Senate on May 14, 1913 and on May 20, 1913; the bill was passed by unanimous consent of the same House that defeated the bill in 1911. In two years the atmosphere had very much changed.

The change was related to the 1912 national election that reflected a tremendous schism in the Republican party. The Republican party was divided as Theodore Roosevelt helped establish the Progressive Party, thereby weakening the Republican party tremendously. Progressives were more aligned with the Democrats than the Republicans.

In any event, the Workers' Compensation Act was passed and went into effect on January 1, 1914.[15]

V. THE 1913 WORKERS' COMPENSATION ACT

The Workers' Compensation Act as adopted in 1913 stood the test of time as it closely resembles the current Act in many major facets. For the first time an injured employee could recover compensation and have a remedy without proof of fault. While the no fault concept of workers' compensation is taken for granted today, it was a landmark breakthrough in 1913 for all the states that passed similar statutes.

In exchange for giving up a right of civil action, workers' compensation became the exclusive remedy of the injured employee against his employer for industrial accidents. Additionally the fellow servant rule was eliminated. Therefore, negligence by an employer or employee or by a fellow employee was not germaine to recovery. The employee was awarded medical care and a wage loss benefit prescribed by statute without any allowance for pain and suffering. The workers' compensation system was administered by the Workers' Compensation Commission, an administrative agency of the Executive Branch. Appeals were made from administrative decisions by the commissioners to courts within the Judicial Branch. These tenets formed the cornerstone of the original Workers' Compensation Act in 1913 and still are in effect today.

The first construction of our Act involved a decision by the Connecticut Supreme Court in 1915, Powers v. Hotel Bond, 89 Conn. (1915) In that decision, the Court held that the trial commissioner issued findings of fact from which an appeal could be taken to the Court without any trial de novo. Appellate Review, as today, was limited to a determination whether there were errors of law rather than retrial of factual issues.

Worth repeating was language in the decision that indicated the Court's interpretation as to the basic purposes underlying the then new Workers' Compensation Act:

> Fault is the foundation of the tort action: compensation for the injury regardless of the fault, of the Compensation Acts. The principle of the Act is new in our law. The statute is remedial in character, and its provisions are to be broadly construed in order to effectuate its purpose. ... The originators of these Acts also believe that they would lessen accident. Some of the considerations behind them were economic: the hardship and difficulty involved in providing the workman's case, the great waste in procuring a recovery, the delay in obtaining the relief, the uncertainty oftentimes in determining the cause of the accident, the vastly increased dangers and the impossibility of personal supervision by the employer under modern conditions of employment, and the necessity of the workman accepting employment under conditions of increased danger or suffering loss of livelihood. Some considerations were moral: the prevention of the tendency of some workmen to press unfounded claims and of others to exaggerate just claims, and the tendency of some employers to defend by means of questionable fairness.
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> Thus the Act, by eliminating the proof of negligence, by minimizing the delay in the award and by making it reasonably certain, seeks to avoid the great waste of the tort action and to promote better feeling

14 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 244; report of Connecticut State Commission on Compensation for Industrial Accidents, New Haven, Connecticut, December 20, 1912.

15 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 245; See also article written by the Hon. J. Gregory Lynch, 50 years under Workmen's Compensation Act, Monthly Bulletin, Connecticut Labor Department (March, 1964).

> between workman and employer, and accepts, as an inevitable condition of industry, the happening of accident, and charges its cost to the industry. It imposes upon an employer, presumably, his share of a common loss in a common industry. The period of compensation is limited as a "concession," it is said, "to expediency," although logically the spirit and purpose of the Act can only be met by having the period commensurate with the period of injury or dependence.

Powers, supra 89 Conn. at 146-147.[16]

While the statute was generally very well accepted, there was some controversy initially. There was a question as to whether employers of fewer than 5 persons were exempted from coverage. This was an issue very dear to farmers. This question was ultimately answered by the Connecticut Supreme Court in Bayon v. Beckley, 89 Conn. 154, 93 Atl. 139 (1915), where acceptance was presumed unless specifically refused.

Also controversial was the practice of insurers who obtained perpetual releases from employees, whereby the employees appeared to elect against acceptance of the Act. Superior Court Judge James Webb ruled this practice invalid.[17]

Within a very short period of time, it became clear that the workers' compensation law gained favor throughout the state. Since this was a new type of insurance and industrial cost, there was considerable anxiety as to whether the cost of the program would be overly burdensome or prohibitive. By 1920, the figures proved that the system could be funded profitably and with reasonable cost.

In 1917 and 1918, self-insurers and insurance carriers paid benefits of $3,082,719.05. In 1918, insurance companies in Connecticut collected premiums of $2,580,377.76 and in 1919 $2,992,322.58. The Hartford Courant remarked on December 30, 1920:

> It is surprising how naturally and noiselessly these important changes in our system of juris prudence had come about ...each session of the General Assembly there arises some differences of opinions... the workman, the manufacturers, and the insurance companies at public hearings and otherwise have all expressed approval of the administration of the act. This is especially reassuring at a period when carping at courts and public officials has become a popular pastime. (emphasis supplied)

VI. CONTINUITY OF FUNDAMENTAL PRINCIPLES

Two corner stones of the Workers' Compensation Act bear mentioning. First, the date of injury rule, still in effect today, was established early on. In Preveslin v. Derby and Ansonia Developing Company, 112 Conn. 129 (1930), the Supreme Court determined that the law in effect at the time of injury applied; and the Court held that this rule was mandated by Article I of our State Constitution as well as the 14th Amendment of the United States Constitution.[18]

Second, the concept that a worker is taken "as is," including any pre-existing disabilities, also was established early on. The rule was attacked in Hartz v. Hartford Faience Co., 90 Conn. 539, 543 – 544, 97A. 1020(1916). The Court made clear that compensation was not dependent upon an employee's pre-existing condition of health.

The bar to civil actions and exclusivity of the workers' compensation remedy has held fast throughout the years and been strengthened by judicial decisions. In 2005, the Connecticut Supreme Court extended the exclusive remedy protection of Section 31-284(a) to workers' compensation insurers with respect to bad faith and misconduct in the administration of workers' compensation claims. The Court indicated that the Workers' Compensation Act provided remedies in the form of penalties available under Section 31-300 and 31-303 and that an employee had to resort to those penalties under the Workers' Compensation Act rather than to a civil action for bad faith.[19]

Interestingly, one constant that has remained glue in holding together the administration of claims is the concept of a full and final settlement. There is absolutely no mention of settlements in the original statute nor in our current statute, yet settlements remain an invaluable tool in administering the statute. The Supreme Court in Sugrue v. Champion, 128 Conn. 574, 24 A2d 890 (1942), commented as to the legal effect of such settlement releases and by implication accepted settlements as a condoned legal tool for administering the Act.

16 See Connecticut Practice Series Workers Compensation Law, Vol. 19, Section 1.
17 Hon. Anthony E. Grillo, Connecticut Bar Journal, Vol. 38 at 248.
18 Preveslin, supra, 112 Conn. at 141.
19 DeOliveira v. Liberty Mutual Insurance Company, 273 Conn. App. 487 (2005).

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VI. CONCLUSION

As mentioned above, the general precepts of the Workers' Compensation Act have remained remarkably stable. Nevertheless, as can be imagined over 100 years of existence, there have been changes. Ebbs and flows in the statute are reflective of politics and the economy. When first passed there was no provision for occupational diseases. The coverage for occupational disease was extended as early as 1919. There was no provision for repetitive trauma, which has become prevalent of late. Repetitive trauma was established as a basis for recovery in 1947 in response to the case of a Pullman train worker who developed shoulder problems as a result of a clearly repetitive pulling motion. The obvious causal relationship between this employee's job and his orthopedic injury precipitated legislation to remedy the injustice of an individual who sustained an injury clearly related to employment, but had no avenue for recovery.

In addition, the creation of the Second Injury Fund and the watershed case of Jacques v. H. O. Penn Machinery Company, 166 Conn. 352 (1974) greatly changed the landscape allowing transfer of claims to the State administered Second Injury Fund where pre-existing conditions contributed to the workplace disability. The unintended consequence was a barrage of cases with tremendous liability for the Fund that ultimately resulted in its demise. Transfer of liability from employers to the Fund was abolished in 1999.

In 1967, there was an expansion of benefits adding the back to the list of body parts entitled to specific indemnity and also permitting unlisted body parts to be awarded compensation for permanency in the discretion of the Commission. Subsequently, after recession in Connecticut, the climate in the legislature changed and benefits were cut back in 1991, 1993 and 1995. Specific indemnity was rolled back by one-third, a straight economic cost reducing provision, and perhaps more importantly, all provisions permitting discretion by the Commissioner were eliminated.

Despite these changes, the administration of the Act by Workers' Compensation Commissioners in an administrative forum has remained constant.[20]

Regardless of some changes in the law, constant throughout has been a guiding principle that the statute is remedial in nature, and is to be generously construed in favor of achieving its aim of compensating injured workers for the effects of work related injuries and diseases. That purpose was initially articulated by the Supreme Court in Powers v. Hotel Bond, 89 Conn. 143, and still serves as the guiding principle today.

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20 See Article entitled Worker Compensation in Connecticut: Retrospective as the Millennium Approaches, Compensation Quarterly, Vol. 9, No. 4, for a discussion of changes in the Workers Compensation Act and its history over the millennium and particularly the past 25 years.