LexisNexis Survey: California Workers' Compensation Centennial

1. How do you view the performance of California's social bargain of no-fault compensation coverage for employees in exchange for elimination of employer tort liability? Are the constitutional goals of the workers' compensation act being achieved?

Barry Bloom, The bdb Group:

Although the current CA. workers compensation system is fraught with litigation and substantial "frictional expense", I believe the "...social bargain of no-fault coverage..." is performing well in respects to the provision of benefits to injured workers and the exclusive remedy and the elimination of employer tort liability. Many of the constitutional goals of the workers compensation act are in place and working for both injured workers and employers.

Melissa C. Brown, Farrell, Fraulob & Brown, PLC:

To the extent workers receive some compensation and medical treatment for some work-related injuries regardless of fault, the bargain has been a good one. Tort standards of negligence are onerous within the scope of most work-place injuries. The no-fault system recognizes the fact that many work injuries are accidents, the result of repetitive activities and exposures, or are part of the job (nurses with needle sticks, psychiatric techs who are injured by combative patients, police and firefighters who are exposed to danger, etc.) These types of injuries left workers without a remedy prior to the enactment of our workers' compensation system.

Unfortunately, the past 25 years of regressive legislation has resulted in public policy that has eroded the rights and benefits of injured workers and their families. In many instances, such as the enactment of *predominant cause* standards for psychiatric injuries, and apportionment of permanent disability to natural causes such as aging, these policies have introduced fault back into the system on the part of injured workers. Different types of injuries have different causation and compensation standards. This does not mean the injuries did not occur, it just means that not all injuries and workers are legally recognized. Because the legislature has plenary power to create the system, the courts have largely deferred to the legislature's take-aways; an apparent acceptance that as long as there is some system of compensation, the constitutional mandate is met.

The reforms over the past two decades addressed problems largely of the insurance companies' own making. Rather than utilizing the tools they always had to deny benefits and litigate disputes, the insurance companies successfully convinced legislators and governors that reforms were the only answer. This has resulted in more complexities, more costs paid to entities other than injured workers, more bureaucracy and inefficiencies.

Today's system fails the constitutional mandate of a complete and adequate system of compensation for the benefit of injured workers, that is expeditious and without encumbrance. Medical treatment to cure or relieve the injury is difficult to obtain and there is no meaningful right to appeal these denials or to obtain evidence to rebut the denials. More resources, and costs to employers, are being spent on the utilization and medical review process in many cases than the cost of the treatment in dispute. The denials of care result in longer recovery times, more lost time from work and pressure on other health care and disability compensation systems.

Pamela Foust, Vice President Claims Legal, Zenith Insurance Company:

Certainly we have achieved great progress when you consider that a little over a hundred years ago, a worker would be out of luck if his own carelessness contributed to the injury or he was injured doing the job he was hired to do and thereby assumed the risk. These former defenses would probably eliminate most of the injuries that are compensated today. Over the years, the courts have expanded the concept of an industrial injury so that many injuries and disabling conditions that would not have been covered in the past are now compensable. The employer's end of the bargain is more difficult to assess because it is unknown how many injuries would have actually given rise to civil liability.

On the other hand, part of the constitutional goal of the workers' compensation act was to give both employees and employers recourse to a legal tribunal for resolution of their disputes that would, in the words of the State Constitution, *"accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character."* Today, a hundred years later, the reality of workers' compensation litigation bears little resemblance to the original vision. Attorneys' files are commonly several feet thick and disputes drag out for years with multiple doctor depositions and hearings before the WCAB while both the employees and employers are left in limbo.

Suzanne Guyan, Workers' Compensation Consultant:

Today's workplace is considerably safer as the decline in the frequency of injuries has illustrated over the years. The no fault standard is very much consistent with the constitutional goals of the workers' compensation act that includes adequate provisions for the comfort, health and safety and general welfare of injured workers. Having said that, employers in California pay too much in administrative expense in order to deliver benefits to injured workers. Higher administrative costs do not translate into consistently superior outcomes for injured workers in California.

David Bryan Leonard, A Law Corporation:

As a trial and appellate attorney who has the opportunity to frequently lecture and educate, the question of the current status of the workers compensation act has to be viewed with the

perspective observed by the Supreme Court in S.G. Borello & Sons, Inc. v. Department of Industrial Relations ((1989) 48 Cal.3d 341 [256 Cal. Rptr. 543, 54 Cal. Comp. Cases 80]). Here, the Court stated that the Act's underlying purpose is to:

(1) to ensure that the cost of industrial injuries will be part of the cost of goods rather than a burden on society,
(2) to guarantee prompt, limited compensation for an employee's work injuries, regardless of fault, as an inevitable cost of production,
(3) to spur increased industrial safety, and
(4) in return, to insulate the employer from tort liability for his employees' injuries.

From my perspective, I think that California has drifted away from protecting society from the cost of industrial injuries. The cost of industrial injuries to society results primarily from unemployment and use of public services, such as hospitals and public assistance. Concepts such as 104 week cap temporary disability under Labor Code section 4656(c) and the requirement of separate ratings under section 4663 as detailed by the Court in Benson v. W.C.A.B. ((2009) 170 Cal. App. 4th 1535, [89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases]) result in lower disability payments despite the combined impact of multiple mechanisms of injury and/or the unique time periods required to reach permanent or stationary status.The Constitutional mandate for the provision of prompt medical treatment to cure or relieve the effects of an industrial injury has significantly eroded. Multiple tracks of litigation along with the dilution of the physician's control over patient relief and outcome create delays and patient suffering.

In addition, we are now in an environment that promotes the strong incentive to shift treatment to other available services provided by non-compensation medical plans. I anticipate that the cost shifting caused by the injured workers' inability to obtain prompt medical treatment that provides adequate pain relief intervention will ultimately burden employer and societal health plans such as the Affordable Care Act.

Finally, I think that most would agree that, in general, employers are motivated to act by the analysis of bottom line income verses expense. Should the employer cost savings envisioned by SB 899 and SB863 ultimately be achieved, I think that the goal of constantly improving industrial safety will fade. In addition, the anticipated cost shifting onto other benefit systems is going to result in a dilution for society in general as other benefit systems react to what they see as exploding cost and utilization. This does not bode well for society at large.

Barry Lesch, Managing Editor, *California Workers' Compensation Reporter*; Of Counsel, Laughlin, Falbo, Levy & Moresi, LLP:

Article XIV, §4 of the California Constitution gives the Legislature the power to create and enable the state worker's compensation system which "shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character." This is the

"social public policy of the State." At this point, a century into the state's compensation system, those are empty words, at least when you're talking about litigated cases. Perhaps the system works brilliantly for that vast majority of claims which never see the light of a litigated day at the Workers' Compensation Appeals Board. However, as far as litigated cases go, which are by and large the only cases a defense attorney sees, we don't believe that applicants, employers, insurers, counsel on both sides or one of the other polyglot sides which have special interest in the system, would assert that provision of benefits is expeditious, inexpensive or unencumbered. This is a particular detriment to both the applicant and to his or her employer and insurer.

At least over the last decade, there has been a clear effort to bureaucratize the system to create clear, bright lines to quickly and easily decide what benefits are to be paid and for how long. This would be a kind of scanning machine that the injured worker would walk through and get a rating, a defined period of appropriate TD and treatment and be done with. Utilization review and independent medical review with reliance on evidence-based medical methodology were created to reduce subjective decision-making and give quick answers on what treatment was to be provided. The importation of the AMA *Guides* to rate permanent impairment was an effort to utilize a seemingly objective tool to quickly rate and dispose of industrial claims.

The effort to create this simple, objective system, whose purpose was also to limit costs and exposures, has created just the opposite result, after some initial success soon after SB 899 was enacted. We have been mired in litigation challenging utilization review decisions, currently leading to a flood of appeals in the IMR system, potentially compromising that system, as well as an ongoing litigation onslaught against strict adherence to the AMA *Guides*, with the Board and courts to date not being particularly willing to enforce the limiting legislative intent in SB 899 and SB 863.

Getting back to the original point, all of these factors have made the provision of comp benefits to injured workers a frequently slow and plodding process, expensive to the defense interests which pay for the utilization review, IMR appeals and litigation over the overwhelming ambiguities in the AMA *Guides* and the current rating schedule and the language in SB 899 and likely in SB 863. There are so many body parts which require separate evaluations now, as sanctioned "add-ons" under the AMA *Guides*, that it is an absolute wonder when all of those fragments of medical evaluation and information can be herded together to come up with a unitary rating, only to lead to more delay with the overabundance of arguments over loss of earning capacity in addition to the multitude of physical factors involved. "Slow and plodding" may be much too mild a description for the medical evaluation and litigation process counsel on both sides of the aisle must deal with on a daily basis. Applicants' attorneys seem to have grown fond of the byzantine process which frequently adds substantial value to cases and fees. Defense attorneys either grow frustrated with the system or cynical about its workings and the underdog role they are required to play in the process.

Perhaps from some global, statistical viewpoint, the system as it is currently constituted is somehow efficient, fair and beneficial to all sides. However, from the "trenches," the daily experience of the system's workings does not seem to fit within those particular adjectives.

Mark Webb, Vice-President & General Counsel, Pacific Compensation Insurance Company:

The system is fulfilling the bargain that was struck in the late 19th and early 20th centuries across the industrialized world. Perhaps the bigger issue is re-examining what the bargain should be today? We now have a host of social insurance programs at the state and federal levels that clearly did not exist when workers' compensation laws were initially enacted. This raises the question of how much longer do we need a workers' compensation system that remains fundamentally unchanged for one hundred years? The response is that we are now seeing more and more interest by large, national firms looking to bring occupational injury and illness into the broader context of employee benefits and not have the costs associated with complying with multiple state workers' compensation systems. Oklahoma is not an outlier, it may well be the shape of things to come. Measuring whether the constitutional goals are still being achieved is a difficult task. The efforts of system participants to better align the system as it exists with the goals that were established a century ago frequently produce unintended consequences of almost Newtonian magnitude. This has been the case with every major legislative, regulatory, and judicial action for the past twenty years. And it will be the case with Senate Bill 863. But yes, the goals are being achieved, limited only by the misdirected objectives of stakeholders and policy makers that so often weigh down the system.

Julius Young, Partner, Boxer & Gerson, LLP; www.workerscompzone.com:

California's constitution envisioned a system of adequate provisions for the general welfare of injured workers and their dependents. The constitution mandates "full provision" for medical treatment as is requisite to cure or relieve the effects of injury. Moreover, the system was to accomplish substantial justice expeditiously, inexpensively, and without encumbrance. Reference is made to "relieving from the consequences" of injury or death.

Has the promise of this social contract been achieved? Not really. California does cover a broad range of injuries and conditions under the workers' comp scheme, delivering a huge volume of benefits to a large number of workers in a system that also gives succor to many cottage industries

But the constitutional mandate of expeditious, inexpensive and unencumbered justice has not been met. Reform after reform has tinkered with different methods to deliver medical treatment and to control medical costs. Yet in many ways the system has become more complex, requiring workers to seek treatment upon a narrowly circumscribed path.

Voluminous regulations , guidelines, cost control mechanisms and appeal procedures create a complicated system for many of those injured. This has led to current debates among

stakeholders as to whether quality medical care is being delivered and whether delays and denials are harming workers. Even the design of a system to administer a $120 million fund for workers' with high earnings losses has been delayed.

Politicians and DWC system administrators rarely reference the constitutional requirement of adequate benefits. Consensus on the subject of what constitutes adequate remains elusive.

Meanwhile, there remains a tension between policymakers and stakeholders who envision a "cookie cutter" justice system and those who seek to preserve a system of more individualized compensation and treatment.

2. How would you improve the current system?

Barry Bloom, The bdb Group:

To improve the current CA workers compensation system, litigation and its ancillary expenses must be reduced substantially and the quality of medical care provided to injured workers must improve dramatically. Tighter control on predatory practices, transformation from a paper-based system to an electronically paperless platform, and greater efficiency and speed in processing lower-level uncontested claims in a fair and complete manner is crucial. A workers compensation judiciary whose mandate is to be unbiased and not advocate, whose responsibility is to adjudicate and not over-reach into areas outside their legal expertise and whose daily responsibility it is to be efficient and hard-working, would also have an extremely positive impact on the system. Finally, the use of universally accepted performance metrics for all of the constituencies in the system, to measure success and opportunities for improvement will assist in deciphering those who are using the system properly from those that are abusing the system for their own agenda.

Melissa C. Brown, Farrell, Fraulob & Brown, PLC:

Scrape the flawed utilization review, IMR, MPN and PQME systems. These efforts have resulted in more delay, benefits taken away from injured workers, more costs to employers and increased bureaucracy and inefficiencies. Fee schedules for medical providers, copy services and interpreters should take care of any cost control concerns with providing benefits outside of an MPN. Quick access to AME or QMEs will resolve medical and indemnity disputes. Permanent disability should truly reflect the loss of injured workers and their families. And, the current TD cap has resulted in many, many workers not reaching maximum medical improvement from their injuries (often due to delays and denials of treatment) before there benefits expire. This wisdom of this cap should be revisited to allow for the extension of benefits based on good cause and substantial evidence.

Safety and prevention must become a reality. It is appalling that most specific injuries are the result of slip and falls that could be prevented. Falls from heights that should be protected. Protection from toxics, appropriate accommodations and ergonomics. As more and more

women are in the work force, recognition that desks and other equipment that is based on the body size of an average U.S. Marine in the 1950s is going to result in injuries that can be prevented. As technology increases, we must recognize that looking at multiple computer screens results in hundreds of neck and other body movements throughout the day, hence the need for appropriate breaks, interventions and other remedial measures.

Finally, judicial review of all matters, required by the constitution, has proved to be the best and most expeditious way to ensure due process of law to all parties. This must be returned to the system.

Pamela Foust, Vice President Claims Legal, Zenith Insurance Company:

I would try to find ways to simplify the process. Workers' compensation law and procedure have become entirely too complex and time-consuming. One problem with trying to legislate and regulate every potential problem that could possibly arise is that instead of eliminating disputes, it promotes them by encouraging people to elevate form over substance. At some point, we have to figure out how to trust each other, at least to some degree.

A lot of the problems in the current system stem from a mistaken belief on the part of great numbers of people that certain things are okay that are not okay at all. Thus, I would launch a public relations campaign to discourage inappropriate conduct. It is not okay for an applicant's attorney to add multiple body parts to a claim if he/she has no reason to believe they were injured. It is not okay for an employer or insurance company to deny a compensable claim just because they can get away with it for the time being. It is not okay for a lien claimant to pursue an insurance company for money that is clearly not owed nor should an insurance company refuse to pay penalties and interest to a medical provider if they are clearly owed. It is not okay for anyone to take the position that if they honestly believe the law is unfair, they have a moral obligation not to follow it. Certainly there will be gray areas, but if we don't try to follow the same rules, we will end up in an even bigger mess.

One other thing I would do is put together a committee of appropriate individuals, which would include a couple of high school English teachers, to go through the Labor Code, cut out the dead wood, fix the inconsistencies, and translate the whole thing into plain English that anyone could understand.

Suzanne Guyan, Workers' Compensation Consultant:

Reduce friction in the system. Reduce the number of issues that wind up in litigation by imposing clearer/mandatory processes for resolving medical, billing and disability disputes. Focus on the right incentives and outcomes, which is return to work through quality medical care. SB 899 and SB 863 moved the system toward these goals; although SB 899 was ultimately undermined by changing system habits and SB 863 isn't fully implemented yet. The IMR early stats are clearly showing disputes are resolved timely and more frequently than not supporting

the utilization review decision, particularly with Schedule II drugs.

David Bryan Leonard, A Law Corporation:

Apportionment theory, Temporary Disability caps, and the return of the treating physician decision making authority.

Barry Lesch, Managing Editor, *California Workers' Compensation Reporter*; Of Counsel, Laughlin, Falbo, Levy & Moresi, LLP:

The question then is how we would improve the current system. Doubtless, there are some, perhaps many, who believe that a tweak here and a pinch there is all that's needed to make the engine purr. SB 863 was an effort to tweak some of the problems created by SB 899 and brought us independent medical review and the supposed abolition of the diminished future earning capacity portion of ratings, at least for cases under 100%, among other things, but these tweaks are now or are going to be grist for the litigation mill.

Mark Webb, Vice-President & General Counsel, Pacific Compensation Insurance Company:

Take workers' compensation off its island. The best example of this is the debate over opioid abuse. This is a public health crisis, not just a workers' compensation cost driver. Until there is an open dialogue with the medical community and the medical and pharmacy licensing boards and the public and private entities who administer health and disability programs—including workers' compensation—with the goal of limiting the addiction, overdose, and death that are unacceptable and unnecessary consequences of the current broad use of these medications, we are not going to make meaningful progress on this issue. Reducing this issue to who pays for the medications may reduce the pharmaceutical costs in the system (although one can legitimately wonder why we can't do this already within the utilization review/independent medical review structure we now have) but will not address the bigger problem. And we as a community will continue to pay for the costs of the addiction even if we are not paying for the medications themselves.

While workers' compensation provides disability benefits, it does so in the context of trying to create return to work incentives. Most state systems do not do a very good job of creating an effective way for disabled workers to reenter the workforce. This is largely due to placing the entire onus of return-to-work on the employer at injury. Especially for the small employer, this is all too frequently an unavailable option. There is no shortage of criticism of the current local, state, and federal job programs. That criticism, however, should not stop us from trying to figure out how to do this better. One way to start is to utilize the money in the newly minted return to work program to provide early intervention, assistance, and opportunities for those who want to return to work. It would not only be more consistent with the concept of return to work than is this fund as currently worded, but it also will provide true mitigation of the effects of the injury in the long term. But as long as cash is king in this system, we will continue to fight

battles—lengthy battles—over how disabled a person is without adequate regard for what the person is able to do once permanent and stationary.

Julius Young, Partner, Boxer & Gerson, LLP; www.workerscompzone.com:

There are a number of ideas (some big, some small) worth looking at:

1. The QME panel process has been fraught with delays and problems and is disliked by many defendants as well as applicants. It may be time to revisit allowing each side to obtain their own QME
2. Establishing a pharmaceutical formulary of allowable medications
3. Establish tighter controls on when opioids can be prescribed, what level of documentation is required. Mandate CURES
4. Establish tighter controls on compounded medications and neutraceuticals and perhaps have a formulary of what medical devices and durable equipment are allowable (which would need to be frequently updated)
5. Revise UR procedures. Prohibit defendants from UR reviewing of their own MPN doctors. Require carriers to file statistics with the DWC on the cost of their UR and their nurse case manager costs. Prohibit carriers from using in house UR outfits/UR from companies in which the carrier has a financial interest.
6. Amend the RFA forms to require doctors to outline the MTUS section which supports the treatment (this would prevent many UR denials where doctors don't bother to consider MTUS in prescribing)
7. Prevent endless UR of medication refills where meds were previously prescribed
8. Further study how a 24 hour care system might be designed to integrate with the Affordable care Act and an indemnity system that would provide adequate indemnity benefits
9. Study treatment access problems (for example, in Northern California it is difficult to find gastroenterologists, dermatologists, urologists, psychiatrists and other specialty care who will take workers' comp). Clarify how authorization and billing is to be handled if the only doctors available refuse to abide by the fee schedule.
10. Consider bringing back some vocational retraining services for workers who can demonstrate that they are motivated and having difficulty re-entering the labor market. This might be done by having the user-funded DWC provide supplementary funding to the State Department of Rehabilitation.
11. Revisit the current IMR system. The volume of IMR requests is high and the quality of the IMR reviews appears to be low.

3. What is the future of workers compensation in California?

Barry Bloom, The bdb Group:

The answer is simple: if systemic change (on all sides) is not made and enforced, we will continue to have "more of the same".

Melissa C. Brown, Farrell, Fraulob & Brown, PLC:

Not rosy. Insurance, utilization and cost containment review profits will continue, but unless we have a serious assessment of the *reforms* of the last 25 years, the system will remain lopsided, expensive and inefficient. Unless the legislature takes the time to fully understand and vet further reforms, we will simply add to the tattered patchwork quilt that is failing to take care of workers injured on the job and their employers, who by and large want to keep their employees, get them back to work and not suffer the lost productivity. We are a society of workers. The loss of a job due to an injury is more than the loss of a paycheck. It is self-esteem. Injured workers want to get back to work. They want the support of their employers to get back to work. Employers should get what they pay premiums for, which is a complete, fair and adequate system of compensation that will take care of their employees injured in our no fault system.

Pamela Foust, Vice President Claims Legal, Zenith Insurance Company:

Predicting the future is very difficult. I'm sure that those of us who were around 25 or 30 years ago would not have foreseen the current system in our wildest dreams. Generally, the Legislature enacts reforms that are designed to address perceived systemic abuses. The reforms have a life of their own and spawn unintended consequences. After a couple of years of legal haranguing and interpretation things settle down and gradually new and unforeseen problems come up. When the situation again reaches the breaking point, there is another big reform and the whole process starts all over again. I don't have any reason to believe that we will not continue to go down this path. However, no matter what happens, workers' compensation will survive and the brightest and best among us will find creative ways to cope and even thrive.

Suzanne Guyan, Workers' Compensation Consultant:

The overall health of employees has a direct impact on the successful recovery of a work injuries and long-term productivity. Obesity studies have shown an alarming upward trend in adults and children. Looking ahead as the labor market becomes more obese, the costs of treating workers compensation injuries may reach seven times greater than today. Until more employers incorporate wellness as part of their safety program, the future of workers compensation will be stretched with the health risk factors of the workforce. Group Health plans have started incentivizing employees' health benefit levels when they have completed early screening exams of co-morbidities. They also encourage employees participate in wellness programs such as smoking cessation to lower their health care co-pays.

David Bryan Leonard, A Law Corporation:

The underlying social bargain motivating the creation of the Act is going to be forgotten.

Barry Lesch, Managing Editor, *California Workers' Compensation Reporter*; Of Counsel, Laughlin, Falbo, Levy & Moresi, LLP:

We have a greater number of special interests involved in the system than we did before SB 899. Previously we had injured workers, employers, insurers, counsel for both sides, doctors and some others more peripherally involved. After the legislation of the last 10 years, we now have organizations which provide utilization review, independent medical review, independent bill review, earning capacity analyses for both sides, forensic physicians who are involved in a larger number and breadth of medical legal evaluations than ever before, as new or larger stakeholders in the comp system. Can we satisfy all or most of the stakeholders? Can we perform some political and social engineering to get back to what Art. XIV, §4 of the Constitution considered uppermost? The likelihood is that we will see more tweaking and patching in the coming years, rather than anything more fundamental being done to create some equilibrium between needs and obligations of the injured worker and his or her employer and possible insurer.

Then another crisis, either real or imagined, and who knows?

Mark Webb, Vice-President & General Counsel, Pacific Compensation Insurance Company:

There are tough times ahead. Part of that is because we still have a great deal of uncertainty as to how SB 863 is going to be interpreted and how behaviors may or may not change given the various amendments that legislation made. We have yet to hear from the Ninth Circuit Court of Appeals on the lien activation fee, and its decision could reinvigorate challenges to the lien filing fee. The Appeals Board needs to clarify the nature and extent of its jurisdiction on utilization review/independent medical review disputes consistent with the lengthy expressions of intent from the Legislature. The four corners of the AMA *Guides* remain elastic and now that the *Guzman* decision has been enshrined we are waiting to see how the four corners of new Labor Code Sec. 4660.1 will be stretched as well. Costs will continue to increase while these dynamics work their way through the new system and we divorce ourselves from much of the old. As we move forward, however, we must resist the temptation to look to Sacramento for yet another layer of paint to be applied to the system when SB 863 hasn't finished drying.

The California economy continues to improve—even if modestly—which is good for all concerned. There is much speculation on the effect of the Affordable Care Act (ACA) on workers' compensation and we must monitor issues such as physician access and dual employment closely to see if there are unintended cost drivers once the ACA is fully operational. Should the Congress pass and the President sign comprehensive immigration reform, there will be a singular benefit in moving millions of people out from the underground economy and having their employment acknowledged, not just at the Appeals Board but also for purposes of wage and hour and workplace safety protections.

As we remember that this is the centennial of the workers' compensation system, we should also remember that twenty years ago Assembly Bill 1880 (Bates and Nolan) was introduced that would have created an integrated health and disability benefit program as an alternative to the workers' compensation system. As is the case with many reform ideas that have occurred over the past quarter century, this one could well be do for recycling as well.

Julius Young, Partner, Boxer & Gerson, LLP; www.workerscompzone.com:

California's workers' comp system has been described as a political tar pit. Formerly, reforms would come when a shifting alliance was brokered between some combination of labor, applicant attorneys, employers or insurers. In more recent years, labor has teamed with an insurer-employer coalition, with "business Democrats" increasingly concerned about the competitiveness and viability of the California economy. Injured workers and their advocates have struggled to get traction for their ideas.

Near term, I forsee a cycle where there is tinkering with regulations , fee schedules and rules over the next several years, but little fundamental change in the system. It is possible that we will see efforts to reduce or eliminate cumulative trauma claims or other types of claims.

If insurance rates rise quickly I would not be surprised to find another employer sponsored reform effort. How labor would respond is unclear.

Looking further out, I believe there will be increasing efforts to either leave the comp system (carve outs) or to merge it with group health (24 hour care). Employers will argue that there is only a certain amount of available money that can be devoted to the comp system, and there will be continuing focus on how to deliver medical care and wage loss benefits to workers in a way that holds down frictional costs.

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