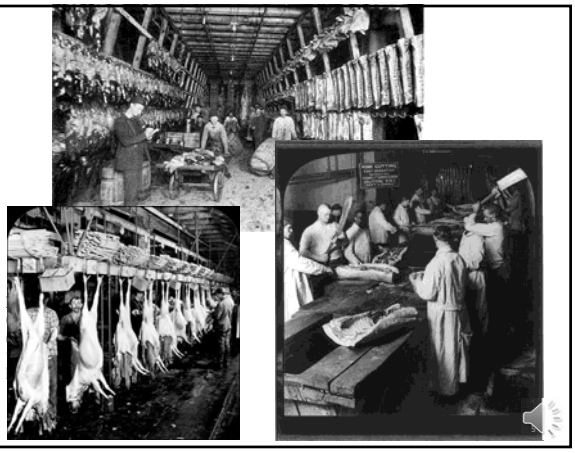
Workers' Compensation: Early Implementation

Glenn Shor
Department of Industrial Relations

A recap: Before WC

- Working Conditions were dangerous and unregulated
- Many California workers were killed, injured, or made sick by their jobs particularly in industrial facilities, construction, railroads, and agriculture
- Workers had no assurance of coverage for medical care or lost wages if hurt. Employers were not required to carry insurance, and lawsuits against employers were often ineffective
- Insurance available to employers had limited coverage at high cost. Some employers were held liable by courts and paid high settlements to injured workers. Or went out of business because they could not pay. The uncertainty of the arrangement demanded resolution.



1911

"**how best can the government be made responsive to the people alone?**"

A just and adequate employers' liability law is needed.

"The risk of the employment shall be placed not upon the employee alone, but upon the employment itself."

"the first duty that is mine to perform is to eliminate every private interest from the government, and to make the public service of the State responsive solely to the people.

The *fire* at the *Triangle* Waist Company factory in New York City on March 25, 1911 killed 146 workers.

1911 – passage of Roseberry Act

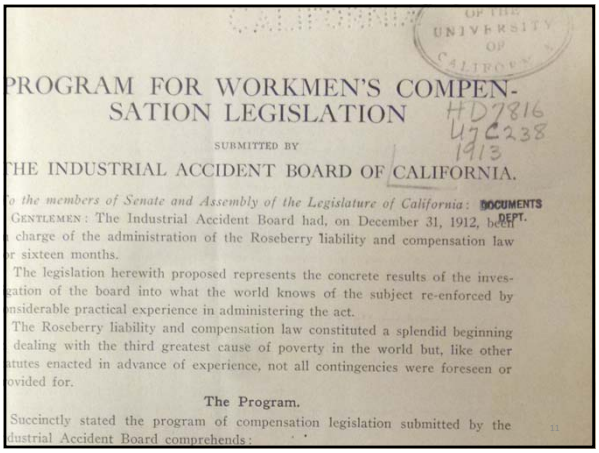
- Voluntary system
  - Employers elect coverage, workers confirm
- Benefits
  - Medical care up to $100 or 90 days
  - Income benefits up to $21 per week, max $5000
- Employers defenses somewhat abrogated
  - Contributory negligence not complete bar
- Exclusion of Agricultural workers
- No provision for insurance regulation
- No safety provisions

Factory Inspection Laws

1912 -Finding that California's factory inspection law of no value

the supplying of pure drinking water and the maintenance of good sanitary conditions in labor camps!

Commissioner McLaughlin reported in 1912 that California had no adequate legislation for the protection of persons working in factories. He stated that the commonly known factory inspection law was practically of no value. Its provisions were too indefinite, there were no precise standards erected by law and the Bureau's authority to insist upon rigid regulations was limited.



PROGRAM FOR WORKMEN'S COMPENSATION LEGISLATION

SUBMITTED BY

THE INDUSTRIAL ACCIDENT BOARD OF CALIFORNIA.

UNIVERSITY OF CALIFORNIA
HD7816 U7C238 1913
DOCUMENTS DEPT.

To the members of Senate and Assembly of the Legislature of California:

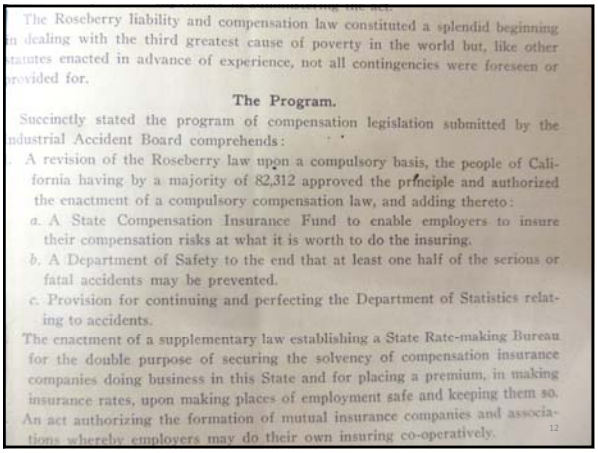
GENTLEMEN: The Industrial Accident Board had, on December 31, 1912, been in charge of the administration of the Roseberry liability and compensation law for sixteen months.

The legislation herewith proposed represents the concrete results of the investigation of the board into what the world knows of the subject re-enforced by considerable practical experience in administering the act.

The Roseberry liability and compensation law constituted a splendid beginning in dealing with the third greatest cause of poverty in the world but, like other statutes enacted in advance of experience, not all contingencies were foreseen or provided for.

The Program.

Succinctly stated the program of compensation legislation submitted by the Industrial Accident Board comprehends:



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The Program.

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A revision of the Roseberry law upon a compulsory basis, the people of California having by a majority of 82,312 approved the principle and authorized the enactment of a compulsory compensation law, and adding thereto:

a. A State Compensation Insurance Fund to enable employers to insure their compensation risks at what it is worth to do the insuring.

b. A Department of Safety to the end that at least one half of the serious or fatal accidents may be prevented.

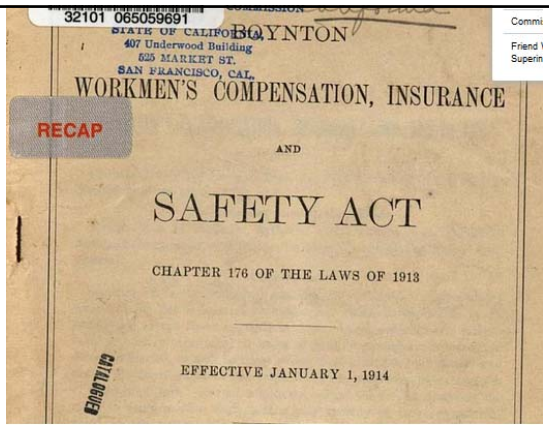
c. Provision for continuing and perfecting the Department of Statistics relating to accidents.

The enactment of a supplementary law establishing a State Rate-making Bureau for the double purpose of securing the solvency of compensation insurance companies doing business in this State and for placing a premium, in making insurance rates, upon making places of employment safe and keeping them so.

An act authorizing the formation of mutual insurance companies and associations whereby employers may do their own insuring co-operatively.

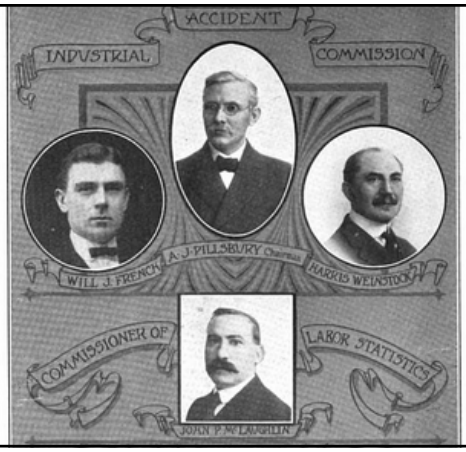
Boynton Act

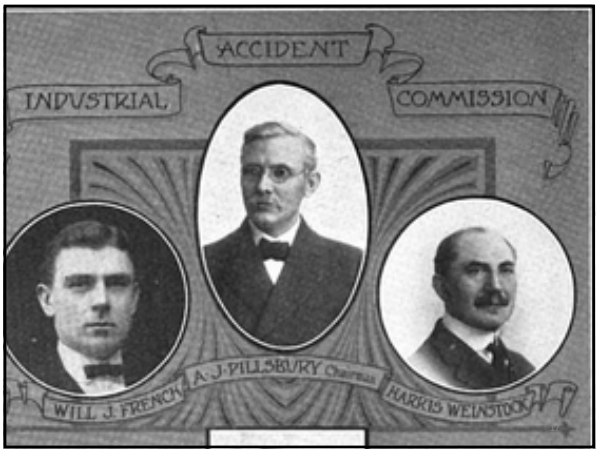
- Compensation
- Insurance
- Safety



Labor Reaction

- Organized labor regarded the passage of the Workmen's Compensation, Insurance, and Safety Act in 1913 had been "the greatest achievement of the 40th session."





Implementation Raises Questions

- what injury conditions should be covered? What should the level of compensation be?
- How should the state regulate private insurance coverage if competing with it was not sufficient to meet other goals?
- Should the basic philosophy of safety regulation be adversarial or cooperative; should it come through “command and control,” through furnishing economic incentives, or through information and training?

Workmen's Compensation, Insurance and Safety Act of 1913 (Boynton)

- **The Boynton Act required the state to combine three missions: social welfare , public health and risk-sharing.**
- The act contained three main parts.
  - The first part contained provisions relating to compensation, including both medical care and lost income replacement.
  - The second part gave the State power to make and enforce safety rules and regulations, to prescribe safety devices to be used by employers, and **to order the reporting of accidents.**
  - The third provided for a state insurance fund, to compete with private insurers, for the purpose of insuring employers against liability for compensation under the Act.
- The act also created an independent Industrial Accident Commission with broad administrative, regulatory, judicial and quasi-legislative powers to implement the provisions of the law.

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Implementation: Role of IAC

- Design and Administer a statistical system to quantify the problem
  - To allow policymakers to amend the law "with intelligence and justice"
- Coordinate a safety department through promulgating rules ("safety orders") and assessing penalties for noncompliance
- Provide oversight and direction to a state-run public enterprise insurance company
- Sit as judge and jury in the adjudication of disputed work injury cases.

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Coverage and Exclusions

- Provide benefits for persons **injured by accident on job**, regardless of fault
- All employees, **except** those engaged in farm, dairy, agriculture, viticulture, or horticulture, stock or poultry raising or in domestic household service
- Denial of compensation for injuries caused by intoxication or willful misconduct of employees

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Benefits

- Temporary total disability at 65% of average wages after a two week waiting period
- Medical benefits with no maximum amount, but limited to 90 days after injury
- No specific injury benefits, all payments related to disability level under IAC schedule
- 40 weeks of benefits for each 10% of permanent disability
- Death benefits up to $5000, with only burial expenses if no dependents

22

Exclusive Remedy

- Provide a special court and rules for claims by workers against employers for work related injuries
- Workers could choose to sue in cases of gross negligence and willful misconduct.
- Insurers prohibited from offering insurance against gross negligence

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SAFETY DEPARTMENT.

Summary of the Law.

Sections 51 to 72, inclusive, of the Workmen's Compensation, Insurance and Safety Act, give the Industrial Accident Commission power to make and enforce safety orders, rules and regulations, to prescribe safety devices, to fix safety standards and to order the reporting of accidents. They also provide for the review of the safety orders of the Commission by the courts and for the establishment of museums of safety.

An obligation is placed on the employer to provide a safe place of employment for his employees. The "place of employment" is defined in the law, and likewise "employment," "employer" and "employee." Emphasis is laid on the providing of reasonably safe surroundings for employees. The law prohibits disturbing any safety device or safeguard furnished and provided for use in any employment or place of employment, and further calls on employees to do "every other thing reasonably necessary to protect the life and safety" of other employees.

Public hearings on safety orders must be held before such orders become binding, in order that any opposition or criticism may be pre

Attitudes of Insurance Companies

"It is indeed a surprising thing to men in the big liability and compensation game that the Fund, which is no more nor less than an insurance company, in the first making, not out of the cradle, so to speak, should dare do so hazardous a thing, without rhyme or reason, or any basis in business and surely none in insurance ethics."

"Why the State Fund at all? What the necessity of such a financial scheme and the organization? Could not the large insurance companies, with their great assets and lawful reserve, take care of the situation in a far more efficient manner at a less percentage of expense?"

Average Justice

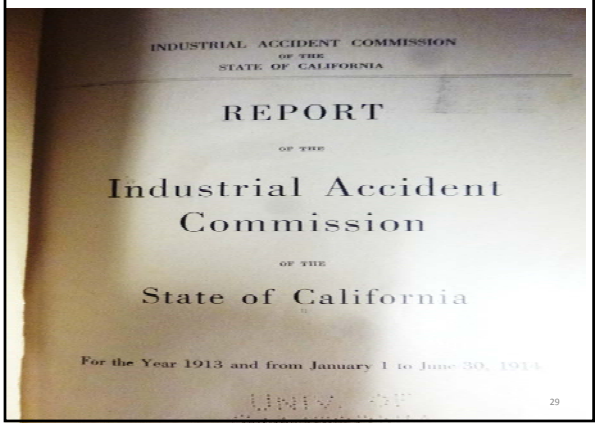
- IAC raised "fundamentally important" issue that WC was not a trial court.
  - Not enough time for trial with the volume brought by WC
  - Perhaps in 75 percent of the cases, there is no requirement that any attorney be present on either side.
  - "average justice"
  - No doubt that it will reach "substantial justice in practically all cases and do it with a minimum cost in time and money on the part of the state, employer and employee."

EVIDENCE

- "…the Commissioners expect to keep their minds open until convinced by such evidence as, in the common and practical affairs of every day life, would produce conviction in the minds of reasonable men. This is the standard that the Commission has set for determining all issues brought before it…if the Courts and the Legislature will permit the Commission to continue as it has begun…

Permanent Disability Rating Department

- Organized July 1913 to assess and determine ways to measure and award benefits for disability severity


INDUSTRIAL ACCIDENT COMMISSION
OF THE
STATE OF CALIFORNIA

REPORT

OF THE

Industrial Accident Commission

OF THE

State of California

For the Year 1913 and from January 1 to June 30, 1914

29

California in 1914

- 50,787 industrial injuries
- 11,086 occasioned disability of two weeks or more
- 560 fatalities

- Of 11,086 lost time injuries, disputes arose in 800 cases, all handled by IAC.

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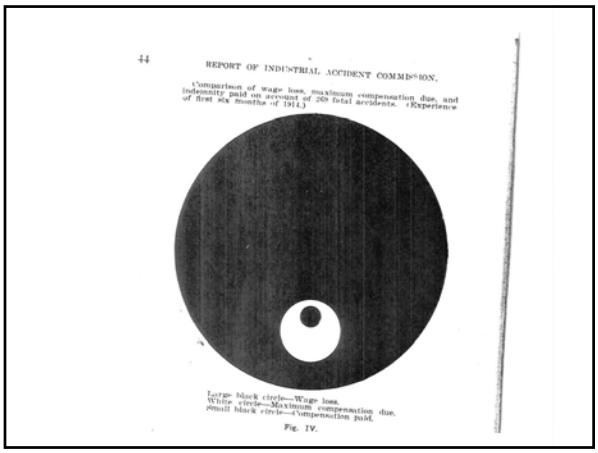
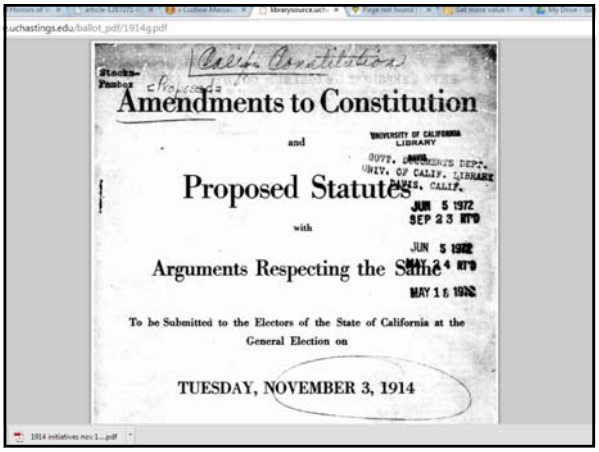
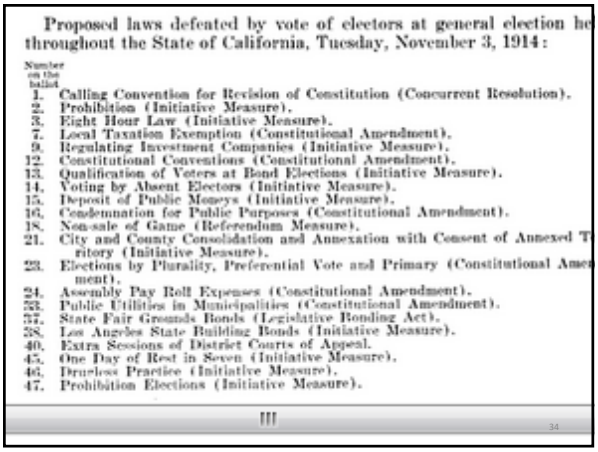


Attacks on the Boynton Act in 1914

- Business and Insurance interests seek repeal of act
  - Constitutional challenges mounted
  - Make workers pay the insurance costs
- Accuse State Fund of being politically motivated, only taking preferred risks and being reckless with its assets
- Attempts to undercut SCIF rates to put it out of business





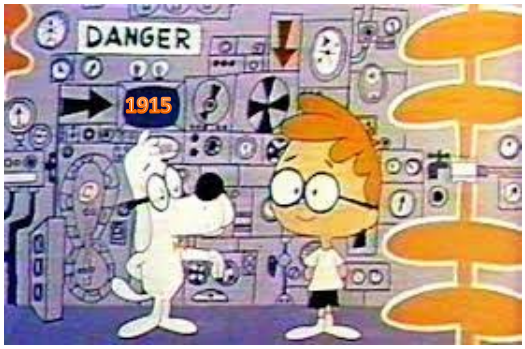
Proposed laws defeated by vote of electors at general election he throughout the State of California, Tuesday, November 3, 1914:

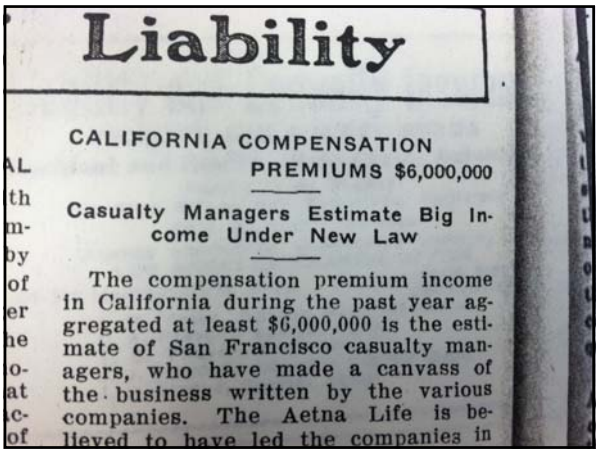
Number on the ballot

1. Calling Convention for Revision of Constitution (Concurrent Resolution).
2. Prohibition (Initiative Measure).
3. Eight Hour Law (Initiative Measure).
7. Local Taxation Exemption (Constitutional Amendment).
9. Regulating Investment Companies (Initiative Measure).
12. Constitutional Conventions (Constitutional Amendment).
13. Qualification of Voters at Bond Elections (Initiative Measure).
14. Voting by Absent Electors (Initiative Measure).
15. Deposit of Public Moneys (Initiative Measure).
16. Condemnation for Public Purposes (Constitutional Amendment).
18. Non-sale of Game (Referendum Measure).
21. City and County Consolidation and Annexation with Consent of Annexed T ritory (Initiative Measure).
23. Elections by Plurality, Preferential Vote and Primary (Constitutional Amen ment).
24. Assembly Pay Roll Expenses (Constitutional Amendment).
33. Public Utilities in Municipalities (Constitutional Amendment).
37. State Fair Grounds Bonds (Legislative Bonding Act).
38. Los Angeles State Building Bonds (Initiative Measure).
40. Extra Sessions of District Courts of Appeal.
45. One Day of Rest in Seven (Initiative Measure).
46. Drunkenness Practice (Initiative Measure).
47. Prohibition Elections (Initiative Measure).

Safety provisions for 1914

- The Boynton act
  - obligated employers to furnish safe employment for all employees
  - State required to "make and enforce safety rules and regulations, to prescribe safety devices, to fix safety standards, and to order the reporting of accidents."
- Legislature addresses hazards in painting, construction, warehousing, longshoring, railroads and mines
- IAC was authorized to use fines imposed and collected for violations of the Act for the enforcement of safety laws and regulations.





Liability

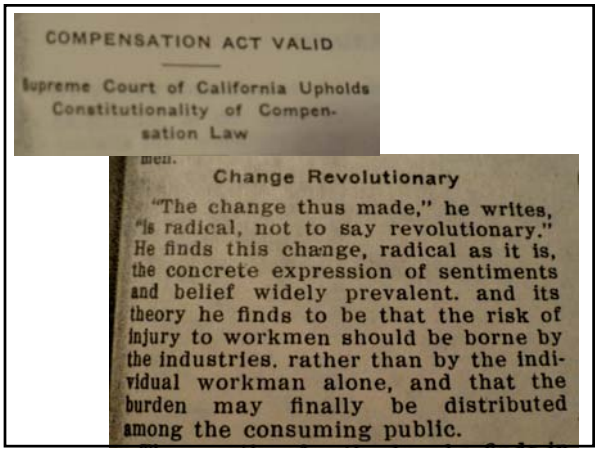
CALIFORNIA COMPENSATION PREMIUMS $6,000,000

Casualty Managers Estimate Big Income Under New Law

The compensation premium income in California during the past year aggregated at least $6,000,000 is the estimate of San Francisco casualty managers, who have made a canvass of the business written by the various companies. The Aetna Life is believed to have led the companies in

Private Insurers fight State Fund

- Insurer trade journals kept up their attack on the State Insurance Fund, accusing it of being politically motivated, of taking only preferred risks, and of being reckless with its assets in promising to pay dividends to employers. Others began an effort to put the State Fund out of business by undercutting its rates.
- See for example, "State Rate Making" in The Adjuster, v. 50, # 1, January 1915, p. 8.



COMPENSATION ACT VALID

Supreme Court of California Upholds Constitutionality of Compensation Law

Change Revolutionary

"The change thus made," he writes, "is radical, not to say revolutionary." He finds this change, radical as it is, the concrete expression of sentiments and belief widely prevalent. and its theory he finds to be that the risk of injury to workmen should be borne by the industries. rather than by the individual workman alone, and that the burden may finally be distributed among the consuming public.

Issues in 1915

- Compensation for Occupational Disease
- Insurance Rate Regulation
- Safety Regulation

Occupational Disease and Compensation

-

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Compensation for Occupational Disease

- As early as 1911, California law required medical practitioners to report patients suffering from occupational diseases to the State Board of Health.
- The emerging public health movement regarded prevention of occupational diseases as having broader implications than simply affecting workers; they were part of a general, and preventable, threat to the health of the populace, "next of kin to the crusade against tuberculosis, infant mortality, hookworm, and typhoid."

Is Occupational Disease Compensable

- Federal Compensation law precluded disease compensation.
  - A Brooklyn Navy Yard worker employed to strip paint from a warship was incapacitated for 37 days from lead poisoning. His claim for compensation under the federal act was denied "because, technically, it is not an accident... under the circumstances, it is a dead certainty."
  - A "folder of heavy paper" at the Government Printing Office developed a tumor in her hand when continuous strain upon her fingers and hand caused a "degeneration of the tendon sheath." Surgery was necessary. When the GPO medical officer found that five other skilled laborers similarly employed manifested the same condition, he determined that since the condition involved "no accidental element" it was "not due to injury."

Boynton Act excluded disease

- Injuries had to occur through “Accidents” only

, "without doing violence to the statute, we may reasonably regard the sudden destruction of the vision by the use of wood alcohol as an accident."

- "draw the line sharply" between accidents, which were covered, and occupational diseases, which were not. He cited medical opinion that said, "at best, it would be a case of cumulative poisoning, which would make it an occupational disease," and thus, in his opinion, not compensable under the law. Weinstock expressed sympathy with the applicant's "tragic" vision loss, but was unwilling to impose a "legal injustice" on the defendants or "establish a precedent which the Commission may not be prepared to follow in the numerous similar cases from time to time brought before it." Lester M. DeWitt v. Jacoby Brothers, and Fidelity and Casualty Company of New York, 1 IAC 170 (Case # 125, June 24, 1914).

Lawyers push the envelope

- The case had other interesting aspects. As in the lead poisoning case, the defendant in the wood alcohol poisoning was the Fidelity and Casualty Co., at the time the fourth largest of 30 workers' compensation insurance carriers in California. But, unlike the previous case, where the insurer's claims adjuster went against an injured worker without counsel, the claimant in the wood alcohol matter was assisted by an attorney, who argued a special type of "accident" had occurred, thus giving the commissioners some leeway. The commissioners ability to be swayed by counsel had significant ramifications for the future; the system had been structured to operate in a relatively nonadversarial manner, but already each side seemed prone to litigate individual cases.

Occupational Disease

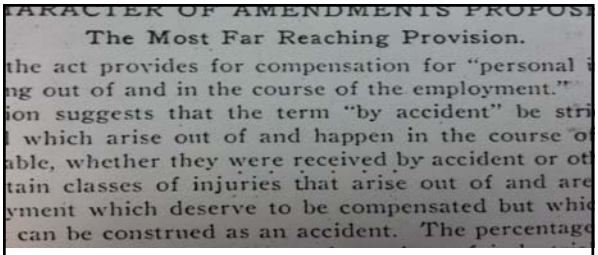
- In 1915, Winifred MacDonald, a chambermaid, developed dermatitis from exposure to cleaning materials on her job. The condition worsened and became inflamed, eventually requiring hospitalization. Yet, because "the trouble began with an occupational disease, not ordinarily arising out of employment" her claim for compensation was denied.
- Winifred MacDonald v. Dunn and London Guarantee (January 30, 1915); discussed in Weekly Underwriter, February 20, 1915, p. 237

Making Occupational Disease Compensable

- The IAC used its denials of occupational disease claims as a way of forcing Legislative attention on the issue "There are certain classes of injuries... which deserve to be compensated but which are not caused by anything that can be construed as an accident....The issue as to whether or not a certain injury constituted an accident is extremely difficult to determine."

Legislative Expansion for Occupational Disease Compensation

Throughout the act the word "injury" has been substituted for the word "accident" or "injury caused by accident." This will permit the compensation of so-called occupational diseases or injuries to health caused by the special conditions of the trade or the employment. This is a distinct improvement of the act. The


The Most Far Reaching Provision.

the act provides for compensation for "personal i
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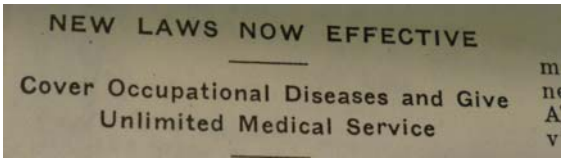

NEW LAWS NOW EFFECTIVE

Cover Occupational Diseases and Give Unlimited Medical Service

Pricing Occupational Disease Compensation

- If categorizing and pricing for injuries was difficult, disease problems were even more complicated.
- The IAC's arguments for including occupational disease coverage stressed a small, approximately 3% increase in system cost. After passage, the estimates began to rise. While a 3% increase might cover the cost of "strictly occupational diseases, such as lead poisoning, etc.," insurers feared the IAC would open up the system to a wide range of "maladies which are only incidental to the employment."
- What would happen if colds, pleurisy, eye trouble, hernia, and other conditions "for which the employer has not heretofore been held" would become subject to compensation payments.

Pricing - 2

- A committee of the Casualty Underwriters' Association was to cooperate with the WCSB in proposing new rates. "The first step will be to determine the classifications in which occupational diseases are found, after which will follow the more difficult work of determining the frequency and cost of such illnesses in California." The committee was given two months to accomplish its task.
- The law mandating compensation for occupational disease went into effect August 1 without any agreement by the committee as to mandated classifications or surcharges.

Compensation but no added Prevention?

- On the health prevention side, less changed. Labor had sought a "Dust-Proof Containers for Cement" which would allow the Labor Commissioner to shut down a job when containers emitted the harmful dust.
- According to Labor's report, the cement manufacturers "maintained an expensive lobby to defeat the bill."
- with the amendments on disease coverage, "it will ... be possible to recover for sickness occasioned by cement dust, even if the cause of the sickness cannot be removed by aid of legislation."

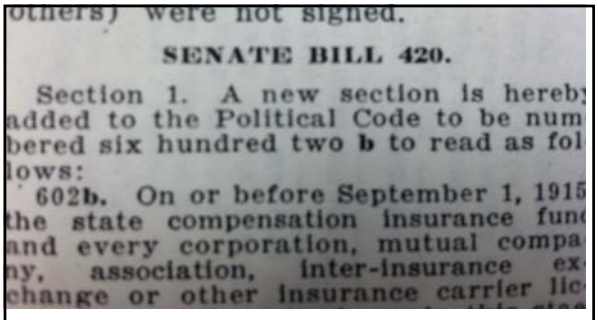
Insurance and Ratemaking

The early State Fund

- State Fund was an immediate success, reaching its 4-year goal of market size within first year
- . Fund established an inspection department to implement a merit rating system
- "State Insurance to Apply Merit Rating," Insurance and Investment News, v. 13 # 8, p. 269, March 19, 1914. The Adjuster estimated that merit rating would bring down rates by about 5 percent generally. Volume 50, #4, April, 1915, p 130.

Insurance Ratemaking

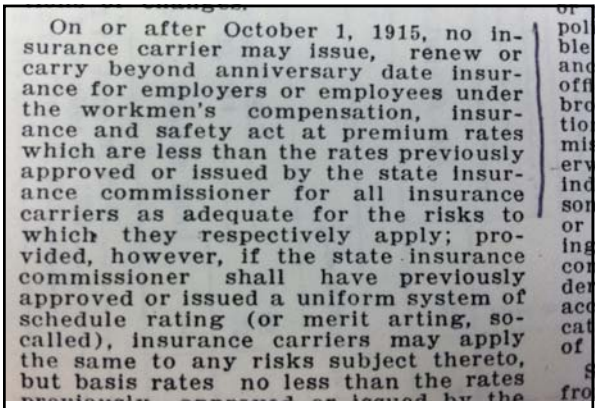
- Competition or Regulating Rates
- Start with Competition
- Politicsbut move onto regulating, to point of establishment of minimum rate law
- Dispute over whether there should be private, mixed, or exclusive state fund

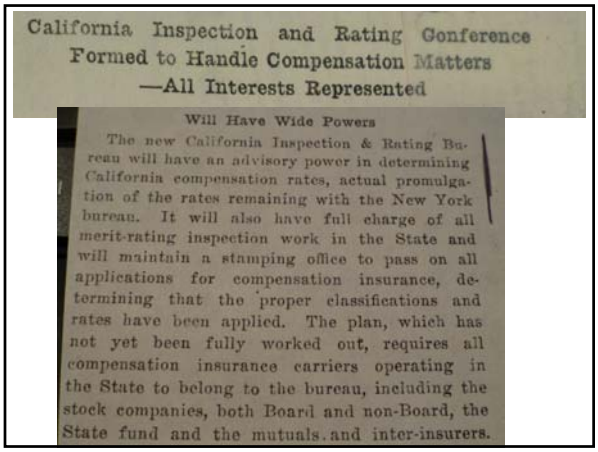

others) were not signed.

SENATE BILL 420.

Section 1. A new section is hereby added to the Political Code to be numbered six hundred two b to read as follows:

602b. On or before September 1, 1915 the state compensation insurance fund and every corporation, mutual company, association, inter-insurance exchange or other insurance carrier lic


On or after October 1, 1915, no insurance carrier may issue, renew or carry beyond anniversary date insurance for employers or employees under the workmen's compensation, insurance and safety act at premium rates which are less than the rates previously approved or issued by the state insurance commissioner for all insurance carriers as adequate for the risks to which they respectively apply; provided, however, if the state insurance commissioner shall have previously approved or issued a uniform system of schedule rating (or merit arting, so-called), insurance carriers may apply the same to any risks subject thereto, but basis rates no less than the rates



California Inspection and Rating Conference Formed to Handle Compensation Matters —All Interests Represented

Will Have Wide Powers

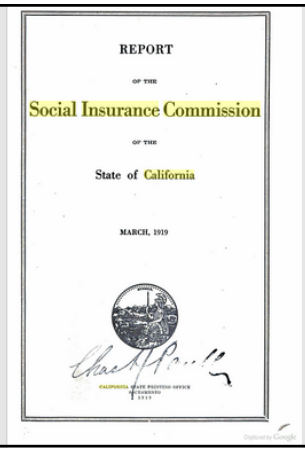
The new California Inspection & Rating Bureau will have an advisory power in determining California compensation rates, actual promulgation of the rates remaining with the New York bureau. It will also have full charge of all merit-rating inspection work in the State and will maintain a stamping office to pass on all applications for compensation insurance, determining that the proper classifications and rates have been applied. The plan, which has not yet been fully worked out, requires all compensation insurance carriers operating in the State to belong to the bureau, including the stock companies, both Board and non-Board, the State fund and the mutuals and inter-insurers.

Merit Rating

- Actuaries vs Engineers. Retrospective vs Prospective Pricing
-

1915 Reduction of Waiting Period

- A Labor-supported measure that would reduce the waiting period for benefits from two weeks to one was expected to add 6% to compensation payouts. On the other hand, insurers estimated that the substitution of "injury" for "accident" could be expected to add 3% to the "pure premium" (loss payments exclusive of administrative costs) needed to pay compensation claims. While some individual commentators opposed even this change, California insurers seemed resigned to accepting the expansion of the system. One California insurance trade weekly indicated that with the support of the governor, SB 510 "will doubtless be enacted." The issue of the waiting period was important to both sides. To labor, despite the legislative promise of adequate benefits and quick service, workers were taking a two-week "deductible" from their wages for industrial disability. To insurers, the issue was getting people back to work. The Medical Director of the insurer-sponsored Pacific Coast Service Bureau sought to frame the debate as one over "malingering" rather than over the adequacy or expense of compensation. "While a man with a family might be willing to prolong a disability into the second week in order to get a week's vacation and 65 percent of his wages, he thinks twice before prolonging it over into the third week, which he has to do now in order to be indemnified."
- See Charles Theo, "An Unpleasant Feature of Workmen's Compensation", The Adjuster, volume 50, #3, March 1915, pp. 113-15. Theo was the medical director of the Pacific Coast Service Bureau. He correctly saw that occupational disease claims were to be allowed but wrote that such amendment should be delayed. "...the economic changes which are taking place in our country will sooner or later demand that the industry be charged with such diseases as are actually the result of the industry, and it is right that this should be so, but to add legislation of this sort to the compensation law in California, which now applies to accidents and which has not been in operation long enough to become thoroughly understood, would be seriously complicating conditions."
- Underwriters' Report (hereafter UR), February 25, 1915.



REPORT

OF THE

Social Insurance Commission

OF THE

State of California

MARCH, 1919

Social Insurance Commission

- **The Social Insurance Commission was intended to complement the Industrial Accident Commission.**
- **During discussions of OD compensation, social reformers and the IAC expected that workers' compensation would be followed by universal health and eventually unemployment insurance as the three legs of the social safety net stool.**
- **The eventual recommendations gave the IAC the responsibility to oversee the integrated system of health and disability coverage.**

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SAFETY ORDERS IMPORTANT

California Rules, Effective January 1st, Should Be Called to Employers' Attention by Insurance Agents

California insurance agents and brokers handling workmen's compensation lines can render their clients an important service by calling to the latters' attention the general safety orders promulgated by the Industrial Accident Commission, effective January 1st. These orders are mandatory and failure by the employer to observe same will give an injured employe grounds on which to sue for damages on the ground of willful negligence should his injury result from the neglect of the employer to install the necessary safety devices. The general safety orders have been issued in pamphlet form, which in-

Serious and Willful Misconduct

- In 1915, the Legislature accepted IAC language that restricted some workers' lawsuits alleging serious and willful misconduct. That same year, however, the issuance of general industry safety orders created specific rules that if not adhered to by employers gave employees the right to sue for damages on the grounds of willful negligence of the employer to install necessary safety devices.
- "Safety Orders Important," Underwriters' Report,(December 30, 1915), p. 17.

Safety Impact

- Outcomes
- In its first year, the IAC was able to cite an "appreciable monetary savings in insurance loss as well as averting much pain, suffering, and loss of earnings power."
  - The number of industrial deaths dropped from 691 in 1914 to 533 in 1915, a 23% decrease, with the most striking changes coming in transportation and public utilities, down from 239 to 172 deaths, and construction, down from 115 to 78.
- There was no evidence that the safety programs had affected numbers of injuries in industry generally, however; temporary injuries actually increased by 9 percent between 1914 and 1915.
- Nevertheless, in a letter to the governor in late 1915, one commissioner noted that "the Industrial Accident Commission considers its Safety Department the most important of all the departments. The prevention of industrial accidents attracts general attention. Compensation at best is a poor substitute for an injury."

Compensation and Labor Law Amendments

- Average annual wages to reflect wages at time of injury only
- Payment for Artificial limbs, the first durable medical equipment, allowed for first time.
- Free drinking water for Workers
- Provision for enforcement of labor laws by Labor Commissioner
- Provision for more Labor Camp inspection
- Improvements in law and enforcement authority on child labor
- Giving Commission on Immigration and Housing greater tools to protect exploited and defrauded immigrant workers'

CHAPTER XXI.

CONCLUSION.

The 1915 Legislature has been described as stupid but honest. Ineffective better terms it. The same could have been said of the session of 1913. Both sessions demonstrated that the California Legislature, when confronted with large problems, breaks down, is ineffective. As at present constituted, it has neither the time nor the machinery to meet the obligations which are imposed upon it.[197]

[197] This was strikingly illustrated in the impeachment proceedings against Superior Judge John L. Childs of Del Norte County. Grave charges had been made against Childs by certain Del Norte county people. The complainants requested that the Legislature

- Thank you!
- Questions?
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