

THE EFFECT OF ATTORNEY INVOLVEMENT  
IN THE WORKERS' COMPENSATION SYSTEM ON  
TIME, BENEFITS COST AND RETURN TO WORK

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Efforts to maintain Workers' Compensation costs at a minimum while providing maximum medical, weekly benefit, and vocational services to a state's industrially injured workers are a continued concern for all Workers' Compensation administrators. Workers' Compensation systems are continually evolving into more complete, cost effective programs. Of great interest in recent years to all persons involved in Workers' Compensation systems is the effect of the attorney in regard to lost time claims. It has been assumed that the attorney may have a great impact on the overall function of most Workers' Compensation programs. This study was designed using Georgia Workers' Compensation cases to determine the degree of impact of the attorney on the outcome of Workers' Compensation cases in regard to time, costs and return to work. Significant results using empirical procedures were obtained and documented. Clearly this data is gives an indication that some of the historical and current goals of Workers' Compensation legislation are not being met. Suggestions for administrative and claims practices improvements which may affect the need for high attorney involvement in Workers' Compensation systems will be discussed. The implications this research may have on service provision and marketing in the field of vocational rehabilitation and vocational evaluation in the private sector will also be discussed.

At the turn of the century, a common law ruled in regard to industrial accidents. Epstein (1982) described this law as "an ironclad rule of breathtaking simplicity." He further interpreted this common law as follows: "no employee could ever recover from any employer from any workplace accident - PERIOD" (Epstein, 1982). It was understood that: (a) the employee assumed the risk of injury at the time of employment, (b) the employer owed the employee no care, and (c) the employer was free of legal accountability (Epstein, 1982). However, due to growing needs of the industrially injured members of the communities throughout the United States, legislation was written in an effort to relieve injured workers from growing financial, medical and vocational burdens. These first legislative efforts required an employee to go through the courts to provide proof of employer negligence to receive compensation. Mallard (1979) claims that 75% of industrial injuries were due to working conditions or employer negligence, but only 15% of these cases were compensated through the courts, usually after long court proceedings and delays.

In 1906, Congress passed a compensation law for interstate railroad employees. This law removed employer negligence and assumption of hazard as grounds for noncompensation (Chiet, 1961). In 1911, the first workers' compensation law was passed in the United States. By 1920, all but six states had passed workers' compensation laws. These laws were the beginnings of modern workers' compensation legislation. The early workers' compensation legislation had six objectives. Briefly, these objectives included: (a) provide prompt, sure reasonable income and medical benefits regardless of fault; (b) provide a single remedy and reduce court delays and costs; (c) relieve charitable organizations of financial drain; (d) eliminate payment of fees to attorneys and witnesses as well as time consuming trials and appeals; (e) encourage employer interest in safety and rehabilitation; and (f) study the causes of accidents in efforts to reduce future accidents and suffering. These laws were designed to take liability from the employer and to make compensation costs a part of production. The economic losses were to be absorbed in the price of the product or service provided.

The two decades beginning in 1908 and ending around 1928 laid the ground work for vast improvements in state workers' compensation programs (Larson, 1963). In the decades following 1928, progress in program improvements slowed down considerably. Several studies have been designed using state workers' compensation programs since the 1960's. In general, the results of each of these studies revealed a set of similar recommendations. These recommendations include: (a) broader coverage, (b) provision of protection against interruption of income, (c) provision of sufficient medical care and rehabilitation, (d) encouragement of safety, and (e) provision of an effective system for delivery of benefits (Conley & Noble, 1982; Thompson, 1979).

A comparison of the goals of the 1920's workers' compensation legislation as listed above and the recommendations for state workers' compensation programs published during the 1960's and 1970's reveal great similarities. How much progress has workers' compensation programs made in recent years? Thompson (1979) designed a study to determine if states were providing adequate, prompt and equitable services. Some improvements were cited between 1972 and 1977 comparisons. However, the United States Department of Labor Workmen's Compensation Administrative Organization and Cost Administration (1966) found that the development of workers' compensation programs had not kept pace with the social and economic advances of the American people.

Employer costs for workers' compensation premiums have managed to surpass the other advances in service provision (Compensation Review, 1982). Employers paid an average of \$2.70 in workers' compensation premiums for every \$100.00 of payroll to protect employees from occupational hazards in 1982 (Compensation Review, 1982). Benefits paid to injured workers have increased substantially in recent decades. From 1940 to 1980 the total benefits paid for injured worker claims have risen from .16 billion dollars to 11.20 billion (Thompson, 1982).

While employers and insurance companies are concerned about rising costs of insurance premiums and workers' compensation claims, injured employees have concerns as well. An industrial injury may result in physical, emotional, social and vocational difficulties (Fox & Company, 1982; Brodsky, 1977; Treon, 1979). In addition, injured workers receive monetary benefits leaving them with reduced income levels after the injury. The laws are designed in this

manner to keep costs down and prevent fraud against the system. Although both the employer and employee receive some benefits from these laws, there is no way to have ideal incentives in a workers' compensation case for the employee and the employer simultaneously so long as the set of possible outcomes is limited to a regular payment from employer to employee once the accident occurs (Epstein, 1982). For this reason, the claimant attorney has become an integral part of every workers' compensation system. The claimant attorney has been seen by some as the antagonist of the insurance company and employer, encouraging costly and timely delays, increased medical and weekly benefit costs, settlement costs, and lower return to work probabilities, as well as creating ill will between employers and employees. Treon (1979), a plaintiff attorney states "I am, in my own objective disinterested way, extremely biased and prejudiced in favor of whomever employs me. I am not guaranteed payment for my opinion, whatever the outcome of the case-I only get paid when I win." He also states that although an attorney on contingency fee stands to earn more the longer a client is out of work, blatant conflicts exist between quick resolution of a case and a lawyer's economic self-interest. These conflicts include the ethics code, receipt of payment after settlement, and injured worker and family pressure regarding return to work (Treon, 1979).

Workers' compensation systems were designed not as liability plans, but as no-fault coverage plans to avoid litigation and assume prompt payment of benefits to workers. Antagonistic relationships between employers, insurance companies, and injured workers, and a high degree of attorney involvement in unlitigated and uncomplicated claims are not consistent with the no-fault liability concept that workers' compensation programs are theoretically designed from.

Minimal research has been done on the effects of attorney involvement in the field of workers' compensation. Much of the speculation about attorney involvement has been made without appropriate evidence to justify the conclusions drawn. An excessive amount of attorney usage in the United States may be attributed to some problems areas commonly found in state workers' compensation programs. These problem areas have been identified and published recommendations for system improvements have been cited above. This study has attempted to define some of the parameters of the effects of claimant attorney involvement in the workers' compensation system. The parameters

reviewed include time and cost variables, and return to work probabilities.

#### RESEARCH METHOD

##### SUBJECTS

Data were obtained from a computer generated random sample of approximately 45,000 workers' compensation files from the Georgia State Board of Workers' Compensation. All cases were open for a minimum of 60 days and closed in the calendar year of 1982. The final two digits of the social security number was used to generate the sample. Cases were selected in this manner until the desired sample size was reached. A total of 1809 cases were reviewed. Of that total, 606 cases had attorney representation. Data were collected for the variables of time in days from date of injury to date of closure, medical costs, weekly benefit costs, settlement costs and case closure employment status, and social security number.

##### METHOD OF DATA COLLECTION

Data sheets were prepared in advance for each case file examined. These sheets provided space for the social security number, date of injury, date of closure, medical costs, weekly benefit costs, settlement costs, vocational outcome, and attorney involvement. Each case file was manually searched to retrieve the required data. The information obtained from each case file was coded and transferred to data sheets. Subsequently, the information from the data sheets was transferred to computer cards for analysis using the Statistical Analysis System (SAS).

##### PROCEDURE

##### TIME AND COST VARIABLES

The time from date of injury to date of closure was measured in months. The medical, weekly benefit, and settlement cost was measured to the nearest dollar. Four one-way Analysis of Variance procedures were performed to test the time and cost variables.

##### VOCATIONAL OUTCOME GROUPS

Vocational outcome was divided into two groups: employed and unemployed. Vocational outcome was measured in terms of the presence or absence of attorney involvement and employment status at the time of case closure. A chi-square analysis was performed to test the vocational outcome variable.

##### RESULTS

The 1982 Georgia State Board of Workers' Compensation case statistics were used to test representativeness of the sample drawn. The sample

characteristics and known population characteristics varied by less than one percent in descriptive variables such as gender and age (Georgia State Board of Workers' Compensation Annual Report, 1982-1983). These negligible differences led to the conclusion that the sample was representative of the entire population of industrially injured workers in the State of Georgia.

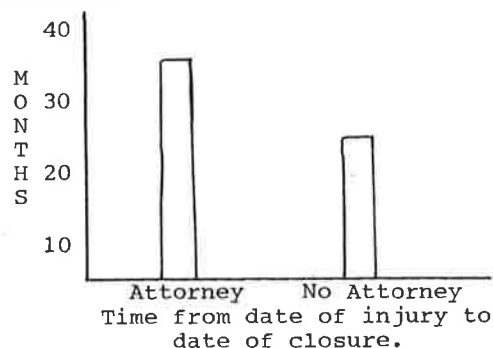
A series of one-way Analysis of Variance (ANOVA) procedures were used to assess the time variable from date of injury to date of closure and the medical, weekly benefit, and settlement cost variables. These variables individually served as dependent measures with the presence or absence of attorney involvement serving as the two level independent variable for each ANOVA. If the presence or absence of attorney involvement was not related to the time and cost variables, then no significant differences would be expected from the statistical analysis. Significant ANOVAs would reflect relatedness of the independent and dependent variables.

To assess the affect of attorney involvement on the employment status of injured workers, a chi-square analysis was conducted. If attorney representation was equally distributed among all injured workers, return to work frequencies would reflect equal proportions of employed and unemployed claimants. A non-significant chi-square would be expected. Significant chi-square values would be indicative of disproportionate observed frequencies of attorney representation among the two levels of the employment status variable.

An alpha level of .05 was observed throughout the investigation to determine statistical significance.

Significant differences ( $F=18.42$ ,  $p<.001$ ) in time from date of injury to date of closure for claims with legal representation and for claims without legal representation were found (see Figure I). According to the sample data, claims with attorney representation remained in an active status for longer periods of time than claims without attorney representation.

Figure I

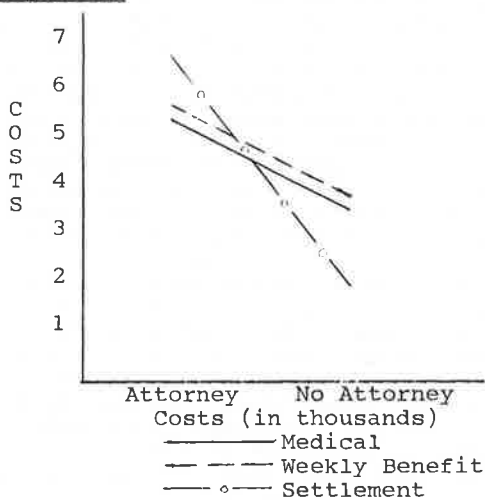


Significant differences ( $F=25.52$ ,  $p<.0001$ ) in medical costs for injured worker claims with legal representation and injured worker claims without legal representation were found (see Figure II). According to the test statistic, medical costs were significantly higher in cases where claimants retained attorneys for representation.

Significant differences ( $F=33.56$ ,  $p.0001$ ) in weekly benefit costs for injured worker claims with attorney representation and injured worker claims without attorney representation (see Figure II). Weekly benefit costs were significantly higher for workers' compensation cases where claimants retained attorneys for representation.

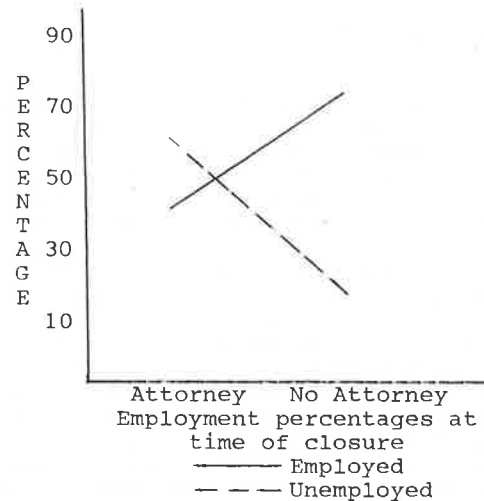
Significant differences ( $F=174.90$ ,  $p<.0001$ ) in settlement costs for cases with attorney involvement and for cases without attorney involvement (see Figure II). Settlement costs were significantly higher in cases where claimants retained attorneys for representation.

Figure II



There was a difference (chi-square value=246.504,  $df=1$ ,  $p.0001$ ) in return to work frequencies based on presence or absence of attorney representation (see Figure III). The data suggests that there is a relationship between attorney presence and a lower percentage of successful return to work claims. The data also suggests that there is a relationship between attorney absence and an increased probability of successful return to work.

Figure III



Each hypothesis revealed significant differences in the time, cost, and return to work variables for workers' compensation claims based on presence or absence of attorney involvement. These data revealed a relationship between attorney involvement in workers' compensation claims and higher than average time frames from opening to closure, higher than average medical, weekly benefit and settlement costs, and a reduced probability of return to work.

DISCUSSION

In workers' compensation cases represented by attorneys, time was a significant factor with represented cases open an average of ten months longer than cases without attorney representation. This equates to a 29% increase in open case time.

The average total cost for claims without attorney representation was \$9,700.00 over a 24 month period. The average cost of claims with attorney involvement was \$17,300.00 over a 34 month period. Financially, this \$7,600.00 difference represents a 44% increase in claims costs.

In the development of this study an assumption was made that the average costs of claims in terms of weekly benefit and medical expenses would be higher for cases with attorney representation. Medical costs for cases with attorney involvement were \$5,100.00. Those cases without representation totaled an average of \$3,700.00 in medical costs; a difference of \$1,400.00 or an approximate 25% increase. Weekly benefit costs for claims with attorney involvement were \$5,600.00. Those cases without representation totaled an average of \$3,900.00 in weekly benefit costs; a

\$1,700.00 difference or an approximate 25% increase.

In Georgia, price ranges for settlement negotiations are partially determined by the treating physician's documentation of physical impairment. This impairment rating is based on guidelines published by the American Medical Association (AMA). The claimant's geographic location of residence, the surrounding labor market, age, work history, and the probability of return to work are also factors involved in determining settlement price ranges. It was felt that attorney representation would have a positive correlation with higher settlement dollars. The average settlement cost for claims with attorney involvement was \$6,600.00 as opposed to \$2,100.00 for claims without attorney involvement. This revealed an average difference of \$4,500.00 dollars resulting in a 66% increase in settlement costs. Most attorney fees range from 25 to 33 1/3% of the settlement dollar. After attorney fees, claimants draw an average of \$4,400.00; or, just over twice the amount of money received in settlements without attorney involvement. The settlement cost difference seems to be directly related to the expertise of the attorney in regard to compensation law and arbitration.

Return to gainful employment is the ultimate goal for most injured workers in state compensation systems. In cases without representation, seventy-five percent of the claimants had returned to work within the 24 month average time period from the date of injury to the date of closure. However, only forty percent of claimants with representation had returned to work during the 36 month average time period from date of injury to date of closure. Thirty-five percent more claims were settled with the claimant working in one-third of the time period when comparing the return to work rates of claimants with and without attorney involvement. This data revealed that there was a relationship between attorney representation and a reduced percentage of successful employment situations for injured workers.

The data regarding increased weekly benefit and medical costs also revealed a relationship with attorney representation. However, this data may very well be a reflection of the differences in the time frame from date of injury to date of closure for cases with and without attorney representation. The percentage of increase in the weekly benefit and medical benefit costs are consistent with the percentage of time increase. The return to work variable may also be related to time. It is well documented that the probability of successful return to work is reduced as time from the date of injury increases

without resolution (Gogstad, 1968; Sternbach, 1968; Fox & Company, 1982; Alfano, 1973).

#### STUDY RECOMMENDATIONS

The data reveal that timely service provision may aide in the reduction of medical and weekly benefit costs and increases in the probability of claimant return to gainful employment. It is felt that the reduction of costs by time efficient service provision would also aide in the stabilization of escalating workers' compensation insurance premiums.

It is felt that current laws exist across the nation which theoretically provide for timely, efficient and cost effective compensation related services. However, due to factors such as variable claims practices, negative attitudes, and lack of education regarding workers' compensation in general; claimants often turn to the attorney for help in benefits provision and understanding the process. Service provision in shorter time frames may aide in the delivery of benefits consistent with the goals of workers' compensation systems.

Alleviation of some of the causes of untimely case management and high claims costs could aide in greater efficiency in the processing of compensation claims by insurance companies. Effective claims handling may be a key factor in controlling excessive use of attorneys in workers' compensation systems. Claims persons are often so busy that their primary function is to "put out fires". Oftentimes performing essential activities to ensure smooth claims handling is postponed in favor of completing tasks requiring immediate attention. This can be a crucial factor in both employer and claimant understanding of the compensation process and their expectations for benefits provision. Time spent educating the claimant in the compensation process may alleviate some of the confusion claimants feel once they have been injured and have begun to lose work time. This may result if less frequent attorney usage by the injured worker.

Other reasons for seeking representation may stem from attitudes of employers and insurance company personnel regarding long term lost time cases. Many times injured workers are considered malingerers who have willingly accepted the lifestyle of a non-working disabled individual. This perception is often "confirmed" in the eyes of employers and insurance representatives upon claimant retainment of an attorney for representation.

Rehabilitation Involvement. It is felt that many of the reasons workers' compensation recipients turn to attorneys can be dealt with effectively by the rehabilitation specialist. Some of these

reasons include: (a) fright regarding physical illness, (b) documentation of financial needs, and (c) embarrassment and depression due to unemployment or disability. Rehabilitation specialists can provide medical management services and explanations of the goals of medical procedures and treatment to the claimant's understanding. When claimants experience financial distress as lost time from work accrues, the rehabilitation coordinator can provide financial counseling. An objective opinion regarding financial needs of claimants can be helpful to claims personnel in determining appropriate actions regarding a claimant's financial situation. Lindley (1981) stated that all injuries also have an effect on the emotions of a person. Vocational rehabilitation coordinators have training in interpersonal counseling skills. As trained counselors they are able to help claimants in dealing with the emotional aspects of their injuries.

Oftentimes the vocational rehabilitation process is enhanced by the use of techniques such as job analysis and labor market surveys as well as processes such as vocational evaluation. These activities aid a workers' compensation recipient in developing goals and appropriate alternatives regarding return to work activity. The early development of return to work goals may result in increases in injured worker motivation and a positive perception of a teamwork approach to positive resolution of the workers' compensation claim. Rehabilitation specialists often provide injured workers and employers alike with educational information regarding workers' compensation operations. This educational activity may enhance a teamwork approach toward effective service provision and return to work. This may result in the avoidance of excessive adversarial feelings between the different parties involved in workers' compensation claims.

In summary, recommendations for controlling excessive attorney usage include adherence to current state workers' compensation laws as well as continued empirical research regarding causality of attorney usage and appropriate alterations to workers' compensation law, administration, and claims practices as the need is documented. The full use of professional services available to injured workers and employers such as rehabilitation and safety management is strongly encouraged as these services have been empirically proven to be cost effective and successful.

#### SUGGESTIONS FOR FURTHER STUDY

The results of this study reveal that there are significant increases in time

and costs, and a significant decrease in return to work in workers' compensation cases with attorney representation when compared with cases without representation.

Complicated litigation or issues involving greater injury severity may account for longer time frames between the date of injury and case closure, as well as increased medical costs. In an effort to document causality regarding any of the issues discussed in this paper, additional empirical evidence must be obtained.

It is felt that complicated litigation such as compensability questions and change of medical condition which might require intervention of a third party should be the primary reasons for claimant retention of attorneys for representation. An interesting study could be designed to compare the number of litigated and unlitigated cases by attorney presence or absence. This type of study would provide information in regard to the effect of the litigation process on attorney retention. Differences in frequencies here may reveal attorney usage in excess of ideal need in the workers' compensation system.

Another interesting study could be designed comparing attorney representation in states where adherence to Thompson's (1979) study recommendations was high and in states where adherence was low. Such a study may reveal a difference in attorney representation patterns based on the degree of state compliance with national recommendations for state workers' compensation system improvements. Reasons for increased amounts of attorney usage in states may be due to ineffective legislation or poor administration of workers' compensation laws in a particular state. If ineffective legislation or poor administration is consistent with a higher attorney retainment rate in a state system, changes in legislation and the subsequent implementation of new or different service provisions can be made.

In addition, a questionnaire could be developed to determine the claimant's reasons for the decision to obtain an attorney for representation. With a questionnaire, data could be gathered directly from the source of the request for representation.

#### CONCLUSIONS

Expedient, efficient, and effective workers' compensation programs are the goals of compensation legislation. The cost of workers' compensation claims and premiums are a continued concern for insurance companies and employers alike. Protection against job loss, economic hardships, and vocationally disabling

medical and psychological conditions of the injured worker are primary legislative concerns. Periodic and appropriate reviews of factors which may be related to the cost and effective operation of workers' compensation programs are necessary to address the concerns of employers, injured workers, and insurance companies. Only after thorough reviews of appropriate factors have been made can steps be taken to improve service provision in workers' compensation programs.

With the implementation of some of these suggestions, perhaps the claimant's perception of the need for the retainment of an attorney for representation will be reduced. These suggestions include: (a) continual empirical research in regard to the effectiveness of the administration of the state laws, (b) legislative changes aimed at reducing litigation problems and claimant probability of attorney retainment, (c) encouragement for insurance companies to provide education to employers and workers in the goal and purpose of workers' compensation to alleviate ignorance of system operations, (d) reduced claims adjuster caseloads, (e) early referral to rehabilitation, (f) increased public knowledge of the role of the administrative board, (g) increased employee awareness of resources other than the legal profession when questions regarding the provision of benefits and claimant rights are raised, and (h) premium discounts for employer implementation of regularly scheduled safety programs.

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