

# A History of Workers' Compensation What Does the Future Hold?



Alan S. Pierce, Esq.  
Pierce, Pierce & Napolitano  
27 Congress Street, Suite 301  
Salem, Massachusetts 01970  
[apierce@ppnlaw.com](mailto:apierce@ppnlaw.com)

Monday, March 25<sup>th</sup>, 2019  
8:10 – 8:50 am

*Work Related Injuries Workshop  
March 25<sup>th</sup> & 26<sup>th</sup>, 2019*



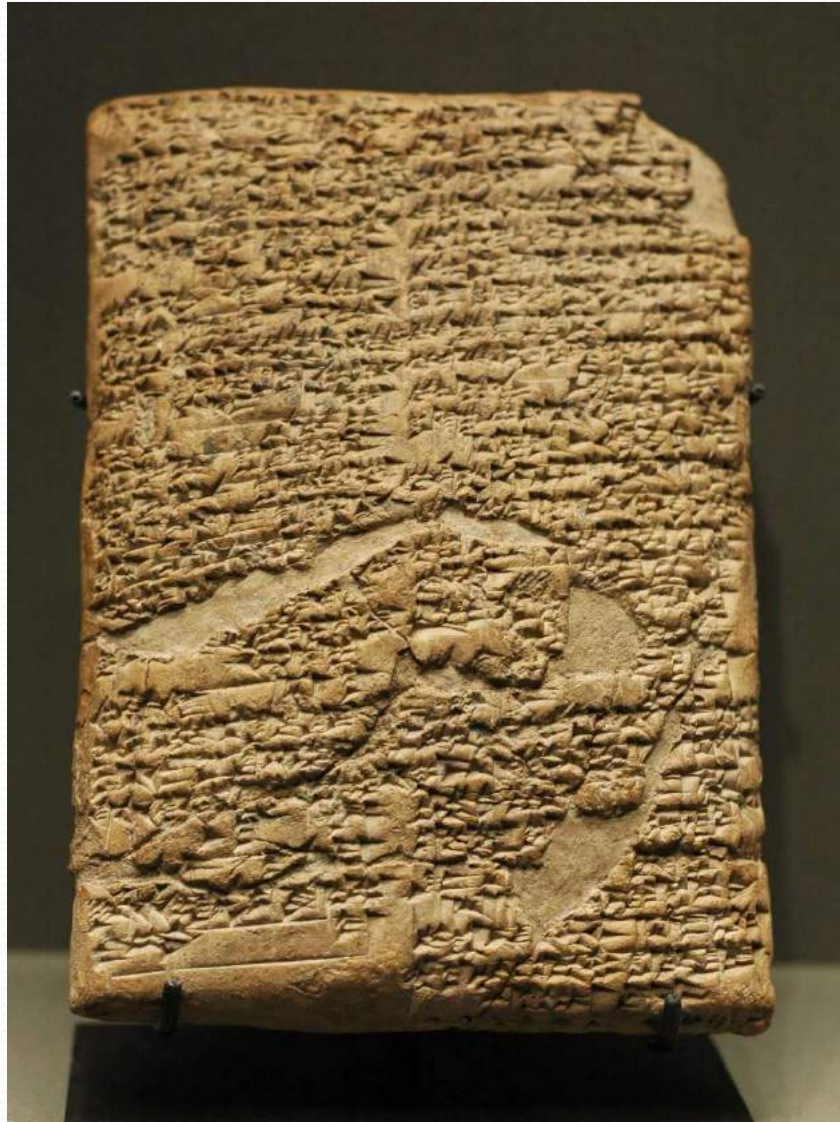
WORKERS' COMPENSATION IS A VERY IMPORTANT FIELD OF THE LAW, IF NOT THE MOST IMPORTANT.


IT TOUCHES MORE LIVES THAN ANY OTHER FIELD OF THE LAW.

IT INVOLVES THE PAYMENTS OF HUGE SUMS OF MONEY. THE WELFARE OF HUMAN BEINGS, THE SUCCESS OF BUSINESS, AND THE POCKETBOOKS OF CONSUMERS ARE AFFECTED DAILY BY IT.

Judge E.R. Mills: *Singletary v. Mangham Construction* 418 So. 2d 1138







According to Gregory Guyton in *A Brief History of Workers' Compensation*, *Iowa Orthopedic Journal*, 1999, in approximately 2050 B.C., in ancient Sumer (now Iraq), the law of Ur contained in Nippur Tablet No. 3191 provided for compensation for injury to a worker's specific body parts.

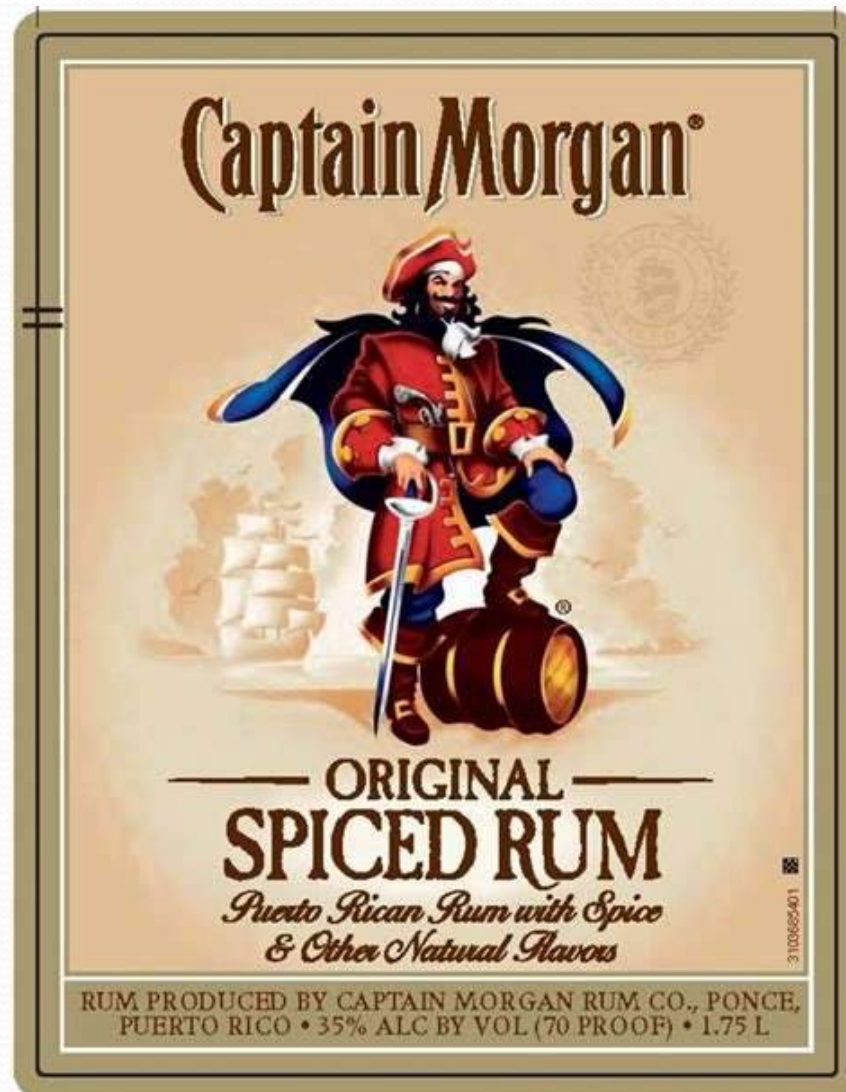
Under ancient law, the loss of a thumb was worth one-half the value of a finger.

The loss of a penis however was compensated by the amount of the length lost. The manner of estimating that however, is a fact lost to history.





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The rise of the Industrial Revolution meant extreme working conditions in early factories. Hazards were plenty, and injury rates were colossal. Though hurt workers rarely received compensation, they could turn to the courts for help.

However, the legal framework for compensating injuries was exceptionally restrictive – so restrictive that the following principles became known as the “unholy trinity of defenses.” If the employer could prove these to be true about the injury, the worker couldn’t claim a farthing:

- **Contributory Negligence.** The employer wouldn’t be held liable if the worker was responsible for his own injury, regardless of how hazardous the machinery or work environment was. So if a worker slipped and lost a hand, they wouldn’t receive compensation.
- **The “Fellow Servant” Rule.** If a fellow employee caused the worker’s injuries, employers were not held liable.
- **Assumption of Risk.** This doctrine held that employees accepted the hazards of their work when they signed their contracts. To make matters worse, many industries had employees sign contracts that relinquished their right to sue for injuries. That’s why these unfair documents earned the grim moniker “death contracts.”





Upton Sinclair, socialist author of *The Jungle*, a novel detailing the horrors experienced by a Lithuanian immigrant working in the Chicago slaughterhouses. Critical acclaim was lacking. A *Time Magazine* critic once said of him, “Of the many millions of words Sinclair wrote, few are the right ones in the right order.” Despite his limited skills, *The Jungle* proved immensely popular, full of compelling and graphic passages such as:

*“(The fertilizer workers’) particular trouble was that they fell into the vats; and when they were fished out, there was never enough of them to be worth exhibiting, - sometimes they would be overlooked for days, till all but the bones of them had gone out to the world as Durham’s Pure Leaf Lard!”*

# New York Times.

## THE WEATHER.

Fair, warmer Saturday; rain probably Sunday; moderate south wind. 45° to 55° Saturday; 40° to 50° Sunday.

ONE IN, ONE-TO-FIVE, IN EIGHT DAYS, 1911-1912

PRICE FIVE CENTS

## 141 MEN AND GIRLS DIE IN WAIST FACTORY FIRE; TRAPPED HIGH UP IN WASHINGTON PLACE BUILDING; STREET STREWN WITH BODIES; PILES OF DEAD INSIDE

The Flames Spread with Deadly Rapidly Through Flimsy Material Used in the Factory.

### 600 GIRLS ARE HEMMED IN

When Elevators Stop Many Jump to Certain Death and Others Perish in Fire-Filled Lobbies.

### STUDENTS RESCUE SOME

Help Them to Roof of New York University Building, Keeping the Panic-Stricken in Check.

### ONE MAN TAKEN OUT ALIVE

Punged to Bottom of Elevator Shaft and Lived There Amid Flames for Four Hours.

### ONLY ONE FIRE ESCAPE

Corner Business Building Loomed Were Not Entrenched—Bulking Modern—Classed Fireproof.

### JUST READY TO GO HOME



The Burning Building at 23 Washington Place.

When the fire broke out at 10:15, the building was full of people. Many of the women and girls were in the upper floors, and they were unable to escape. The fire spread rapidly, and the building was soon a mass of flames and smoke. The firemen arrived at 11:00, but they were unable to get inside the building. The fire was finally extinguished at 12:00, but the damage was done. The building was a total loss, and the bodies of the victims were found in the street and in the building.

The fire broke out in the basement of the building, which was used as a storage room. The fire spread rapidly, and the building was soon a mass of flames and smoke. The firemen arrived at 11:00, but they were unable to get inside the building. The fire was finally extinguished at 12:00, but the damage was done. The building was a total loss, and the bodies of the victims were found in the street and in the building.

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MASSACHUSETTS EMPLOYERS INSURANCE ASSOCIATION  
CREATED BY THE WORKMEN'S COMPENSATION ACT TO INSURE EMPLOYERS AT RISK  
POLICY OF INSURANCE

No. 1

This Certificate of

Everett Mills

is hereby in the Commonwealth of Massachusetts, is a subscriber to the Association and is entitled to the privileges thereof subject to law and the by-laws of the Association.

In consideration of the payment to the Association in advance of the annual premium to the Subscriber, as evidenced by the receipt of the Association bearing the same number as this Certificate, the Massachusetts Employers Insurance Association promises to make the Subscriber furnish the compensation and perform all the other services and duties in which the Subscriber or his employee shall be entitled under the provisions of Chapter 151, Acts of 1911, being "An Act relative to payments to employees for personal injuries sustained in the course of their employment and to the prevention of such injuries," and all amendments thereto and its amendments thereto, from and after the date of the date of this policy, to wit: on the first day of July, 1912. This policy may be renewed for periods of twelve months each by the payment in advance of the premium for each such period without the issuance of a new policy; the payment of each such annual premium to be evidenced by a new receipt.

The Association reserves the right to cancel this agreement if the Subscriber fails to pay by the rules, regulations and by-laws of the Association.

Given at Boston, Massachusetts, this first day of July, 1912.

MASSACHUSETTS EMPLOYERS INSURANCE ASSOCIATION,

A. B. [Signature]  
[Signature]



[Signature]









The Report of

**The National Commission  
on State Workmen's  
Compensation Laws**



WASHINGTON, D. C.  
July 1972





# 1972 National Commission Essential Recommendations

Among the recommendations, 19 were deemed “essential” and included:

- Compulsory not elective coverage
- Full coverage for occupational injuries AND diseases
- Full medical and rehabilitation benefits
- Safety
- Employee choice for interjurisdictional claims
- Maximum weekly benefit set at 100% of state average weekly wage
- Weekly rate be 66 2/3% of worker’s average weekly wage
- Cost of living increases
- Provisions for permanent total and permanent partial incapacity
- Maximum of 3-day waiting period for indemnity benefits to commence







## 1985 Massachusetts Workers' Compensation Reforms

- Creation of Department of Industrial Accidents with Administrative Judges and Administrative Law Judges replacing Commissioners
- Increase of Administrative Judges
- Establishment of 5 permanent regional offices
- Medical benefits and vocational rehabilitation benefits remain open after lump sum settlement
- Duration of benefits not monetary but based on length of time; i.e., 260 weeks Section 34; 600 weeks Section 35
- COLA's for permanent total and temporary partial disability
- Creation of mandatory vocational rehabilitation through Office of Education and Vocational Rehabilitation (OEVR)
- Funding of Department by employer assessments
- 60-day Pay Without Prejudice period
- Causation standards for Psychiatric and Recreational Activity injuries



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## Summary of 1991 Reforms

- 5-day waiting period (unless disability extends more than 21 days)
- Reduction of weekly Section 34 from 66 2/3% to 60%
- Reduction of Section 35 from 600 weeks to 260 weeks (or 208 weeks)
- Elimination of non-scar based disfigurement except hands, neck or face
- Elimination of Section 35 COLA
- Establishment of presumption of retirement to allow termination of Section 34 or Section 35 benefits
- Medical Treatment Guidelines
- Utilization Review for medical treatment pre-approval
- Adoption of Impartial Examining Physician
- Causation standard changes; Major cause/Predominant contributing cause
- Payment Without Prejudice expanded to 180 days (or up to a year)

Figure 2, constructed using data from the 2012 and earlier editions of the NCCI *Annual Statistical Bulletin*, shows the changes in statutory benefits for the five year intervals from 1959 to 2011. Workers' compensation benefits increased during the 1960s at significant rates. After the National Commission submitted its report in 1972, statutory benefits increased substantially between 1970 and 1985 and modestly between 1985 and 1990. Then statutory benefits declined in the decades of the 1990s and the 2000s.

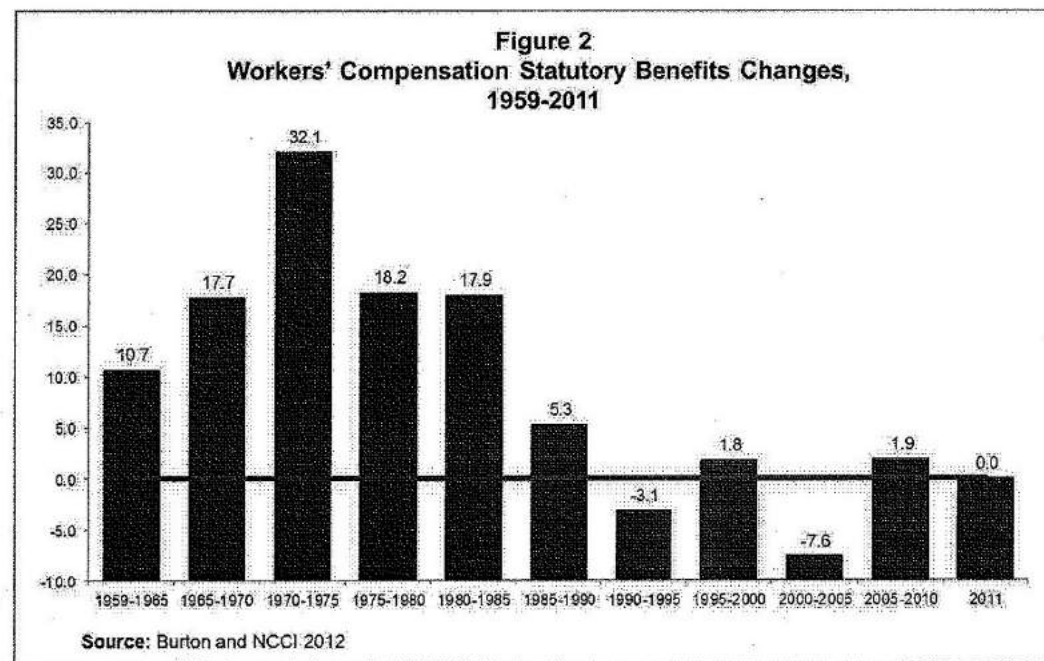




TABLE 18: IMPACT OF RATE CHANGES, 1991-2016

| YEAR | Percent Change from Previous Year's Rate | Assuming a Manual Rate of \$100 in 1991 |
|------|--|---|
| 1991 | + 11.3%                                  | \$100.00                                |
| 1992 | No Change                                | \$100.00                                |
| 1993 | + 6.24%                                  | \$106.24                                |
| 1994 | - 10.2%                                  | \$95.40                                 |
| 1995 | - 16.5%                                  | \$79.66                                 |
| 1996 | - 12.2%                                  | \$69.94                                 |
| 1997 | No Change                                | \$69.94                                 |
| 1998 | - 21.1%                                  | \$55.18                                 |
| 1999 | -20.3%                                   | \$43.98                                 |
| 2000 | No Change                                | \$43.98                                 |
| 2001 | + 1%                                     | \$44.42                                 |
| 2002 | No Change                                | \$44.42                                 |
| 2003 | - 4%                                     | \$42.64                                 |
| 2004 | No Change                                | \$42.64                                 |
| 2005 | -3%                                      | \$41.36                                 |
| 2006 | No Change                                | \$41.36                                 |
| 2007 | -16.9%                                   | \$34.37                                 |
| 2008 | -1%                                      | \$34.03                                 |
| 2009 | No Change                                | \$34.03                                 |
| 2010 | -2.4%                                    | \$33.21                                 |
| 2011 | No Change                                | \$33.21                                 |
| 2012 | No Change                                | \$33.21                                 |
| 2013 | No Change                                | \$33.21                                 |
| 2014 | No Change                                | \$33.21                                 |
| 2015 | No Change                                | \$33.21                                 |
| 2016 | +1.5%                                    | \$33.71                                 |



## What the Future Holds

- Reassessing the Grand Bargain of 1911 – are current benefits reasonable or adequate?
- Should there be a new National Commission?
- Should there be a Model Workers' Compensation Act and/or Minimum Standards?
- Increasing constitutional challenges
- Who advocates for the injured worker (politically)?
- Changes in nature of work; changes in economy
- Blurring of traditional tests of employment relationship
- Specter of single payer healthcare
- Additional economic safety nets not present in the early 20<sup>th</sup> century
- Phenomenon of what some call the Race to the Bottom
- Alternatives to traditional workers' compensation coverage

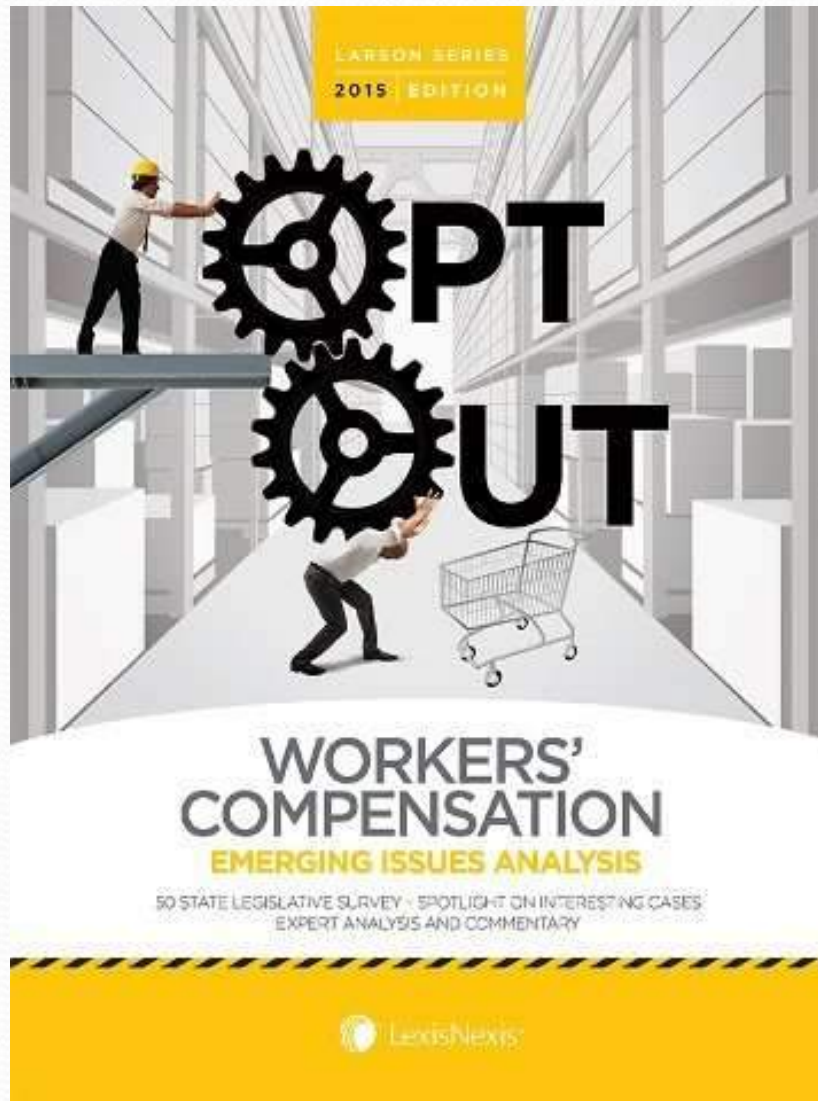


**arawc**

Association for Responsible Alternatives  
to Workers' Compensation



Image courtesy of arawc.org





# Thank You



Alan S. Pierce  
Pierce, Pierce & Napolitano  
27 Congress Street, Suite 301  
Salem, Massachusetts 01970

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