Passage of the 1912 Michigan Workmen's Compensation Act

A Grand Bargain for Whom?

By Charles W. Palmer

Passage of state workers' compensation legislation in the early 1900s is commonly referred to as the "Grand Bargain."[1] Workers gave up the right to sue and recover full tort damages from their employers in court in return for prompt and fair compensation and medical benefits without regard to fault.[2]

This landmark social remedial legislation was passed after decades of dissatisfaction with the common-law court system as the means of compensating injured workers. The passage of Michigan's 1912 Workmen's Compensation Act resulted from labor and public dissatisfaction with inadequate legal remedies and the leadership of a progressive-minded governor with a legislative majority. However, a review of history suggests Michigan's manufacturing industry played a critical role in promoting a workers' compensation system over a modified court system remedy.

The Industrial Revolution radically changed the nature of work and society. The invention of the steam engine, the rise of railroads, and the emergence of large-scale manufacturing caused rapid economic and social change. The rise of the industrial economy also significantly increased the number of ways workers could be killed or injured in the workplace.[3]

In Great Britain, common-law negligence principles were a potential means of recovery for injured workers; then, as now, negligence principles require proof of duty and breach of duty before the issue of damages can be reached. The common law doctrine of *respondeat superior*, or the responsibility of a master for the torts of his servants or agents, was well established in British law and could have been an effective means of holding employers liable for workplace injuries.[4] However, in the first recorded common-law case of an injured employee against an employer, *Priestley v Fowler*, the Court of the Exchequer held that an employer is *not* liable for the negligence of an injured worker's fellow employee. Lord Abinger's opinion created the "fellow-servant rule" based upon his fear of the "alarming extent" of potential employer liability and the "absurdity" of the consequences. Lord Abinger also suggested that employees knew better than the employer the risks of their work.[5]

The fellow-servant rule was adopted by the Massachusetts Supreme Court in *Farwell v Boston & Worcester Railroad Corporation*. Citing *Priestley* and other British cases, the court found an implied contract between employer and employee under which the employee assumes all natural and ordinary risks of the job, including the negligence of a fellow employee.[6] The fellow-servant rule, as well as the defense of assumption of risk, first appeared in Michigan law in *Michigan Central Railroad Co v Leahey*, when Justice James V. Campbell stated that these two defenses were "settled law." Campbell also referenced the "well settled" rule of contributory negligence, which was a total bar against any recovery.[7]

The workers' burden of proving employer negligence and the employers' defenses of contributory negligence, assumption of risk, and the fellow-servant rule made it difficult for injured workers to obtain a recovery. As industrial carnage increased, popular frustration with common-law defenses grew. After 1900, it was estimated that 35,000 deaths and two million injuries occurred annually in U.S. workplaces. In the railroad industry alone, the injury rate doubled between 1889 and 1906.[8]

Countering the power of the unholy trinity of employer defenses, sympathy for victims of workplace injuries motivated juries to find ways to circumvent these rules. In their article *Social Change and the Law of Industrial Accidents*, Friedman and Ladinsky cite Wisconsin as the paradigm example of jury sympathy for injured workers; they reported that of the 307 workplace personal injury cases that ended up in the Wisconsin Supreme Court up to 1907, nearly two-thirds were decided in favor of the injured worker in trial courts.[9] The fellow-servant rule was weakened by some courts' refusal to apply it where the negligent employee was a supervisor and increased emphasis that the employer had the duty to provide a safe workplace, tools, and equipment.[10]

By the late 1800s, legislative bodies began modifying common-law rules. Great Britain's Parliament passed the Employers' Liability Act of 1880, which negated or minimized the common-law defenses.[11] However, the law was effectively nullified just two years later when a court ruled that an employer could require an employee to waive protections of the law as a condition of employment.[12]

In 1884, Germany, facing agitation and increasing pressure from socialists, passed the first modern workers' compensation system. The law provided for weekly payments of 50 percent of wages for the first 13 weeks, followed by two-thirds of wages during the remaining duration of the disability. It provided potential lifetime benefits for permanent total disability and included a funeral benefit and pension payments for surviving dependents. It also included free medical treatment, medicines, and medical appliances.[13]

Great Britain passed the Workmen's Compensation Act of 1897, which provided compensation for injuries, without regard to negligence, caused by "personal injury by accident arising out of and in the course of employment." The common-law defenses were eliminated, but injuries caused by "serious and willful misconduct of that workman" were not compensable.

At a Glance

The passage of workers' compensation legislation in 1912 brought significant reform, but whether it was a grand bargain for injured workers, then or now, is open for debate. Does it still meet the principles of reasonable compensation, certainty of amount and payment, and payment without litigation?

The law also maintained the injured workers' option of suing the employer in court "when the injury was caused by the personal negligence or willful act of the employer, or of some person for whose act or default the employer is responsible."[14]

During the first decade of the 1900s, pressure in the U.S. to reform the common-law system was growing.[15] In 1906, President Theodore Roosevelt said the current system was "a great social injustice" and compensation for injured workers should be paid by industry.[16]

Congress passed the second Federal Employers' Liability Act (FELA) in 1908, which was applicable only to railroad employees involved in interstate commerce, or in the District of Columbia or U.S. territories. It provided that any covered railroad "shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in the case of the death of such employee, to his or her personal representative,…for such injury or death *resulting in whole or in part from the negligence* of any of the officers, agents, or employees of such carrier, *or by reason of any defect or insufficiency, due to its negligence*, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment" (emphasis added).[17]

Under FELA, contributory negligence does not bar recovery but reduces the employee's recovery by the percentage of the contributory negligence.[18] In contrast to workers' compensation statutes, FELA plaintiffs are entitled to a jury trial and may be awarded full tort damages, including pain and suffering.[19]

In 1910, New York passed the first state workers' compensation law, which drew upon many of the concepts in Britain's Workmen's Compensation Act of 1897.[20] In 1911, however, the New York Court of Appeals held it deprived employers of their property without due process of law because it compelled employers to pay for employees' injuries without regard to fault.[21] During the two-year period starting in 1910, 17 states, including Michigan, created commissions to consider workers' compensation reform, a popular Progressive Era movement that was gaining momentum around the country.[22]

At Michigan's Constitutional Convention of 1907, proposals to modify or eliminate common-law defenses in workplace lawsuits generated extensive debate. The proposals failed by only a narrow margin; employers knew the debate was about to move to the state legislature.[23]


Hal H. Smith

Hal H. Smith, attorney for the Michigan Manufacturers' Association (MMA), recognized that supporting a workers' compensation system was preferable to abolishing common-law defenses. In late 1908, Smith included the following in a report for the MMA's annual meeting:

> "Of more importance and of more danger is the agitation for the repeal of the contributory negligence rules and the fellow servant rule. A determined effort was made to insert in the new constitution some provision in this particular, but it was defeated. *It is probable that radical changes will be proposed in this regard and not at all unlikely that they will succeed…the only way the growing feeling for greater liberality in this regard can be made is by some form of compulsory insurance or compensation acts*, such as now are being tried out in England…. The old rule that the employee assumes the risk, must be modified. The fellow servant must be more strictly defined, and *he who is injured in your employ must be certain of some compensation*" (emphasis added).[24]

Due to Smith's advocacy, a workers' compensation system attracted broad support in Michigan's manufacturing industry.[25]


Chase Osborn

In 1910, Chase Osborn, a progressive Republican, was elected governor. Republicans enjoyed overwhelming control over Democrats in the state legislature—an 88–12 margin in the House and a 28–4 edge in the Senate.[26] At his inauguration, Gov. Osborn called the three employer defenses "anachronisms [that] make for heartless and cruel injustice" and called for the legislature to take action.[27] However, state lawmakers were unable to reach consensus on reforms and instead voted to create a commission to study the problem.[28]

Osborn appointed three individuals to represent employer interests, including Smith, and two representatives from labor organizations. The commission studied existing systems in England, Germany, and the United States; hired investigators who contacted 9,000 employers, labor groups, and other interested parties; held public hearings in Grand Rapids, Muskegon, Battle Creek, and Detroit; and gathered extensive statistics and reports on injuries and worker injury lawsuits.[29]

The commission submitted its report to the governor in December 1911, concluding that compensation to injured workers was inadequate, litigation forced parties to spend large amounts of money on attorney fees, and employers should be protected from unreasonable risks of excessive jury verdicts. It estimated that roughly half of all injuries occurred without any apparent negligence and, therefore, dismissed the concept of modifying common-law defenses. Finally, it concluded that a workers' compensation system should be based on the following principles:

1. Reasonable compensation at minimum cost for all accidents, except the result of willful fault.
2. Certainty of amount.
3. Certainty of payment.
4. Payment without litigation.
5. Prevention of accidents.[30]

The report included a draft of a workers' compensation law with the recommendation that it be mandatory for all public employers but voluntary for private employers in order to avoid the due process issues of the New York Court of Appeals case. It was also recommended that if an employer

elected not to participate in the new system, however, it would lose its common-law defenses, effectively compelling compulsory participation.[31]

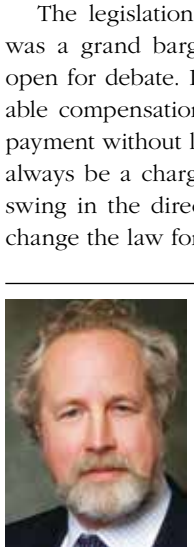
The commission's proposal exempted agricultural or domestic workers, provided weekly compensation benefits after two weeks of disability at a rate of half of the average weekly wage, subject to a minimum of $4 per week and a maximum of $10 per week. Wage-loss benefits were capped at $4,000. Employers were responsible for paying medical services for three weeks. It included a schedule of benefits for specific loss of various body parts. Death benefits to dependents included weekly wage loss at half of the average weekly wage for up to 300 weeks. Any agreement to waive the workers' rights under the law was invalid.[32]

The report advocated creating a three-member Industrial Accident Board appointed by the governor to decide contested cases. Judicial review was limited to consideration of issues of law by the state Supreme Court. Employers would be required to carry insurance or apply to become self-insured either as a single employer or a group of employers in a specific industry.[33]

When the commission issued its report, the 1911–1912 legislative session had ended. However, Osborn called a special session for the purpose of considering the proposed workers' compensation bill and a presidential primary bill. The special session began in February 1912 with Osborn urging the legislature to pass the proposed workers' compensation law immediately. Republicans had effective control over both chambers of the legislature and employers almost unanimously backed the proposed workers' compensation law.[34]

The Detroit Federation of Labor opposed the bill, favoring elimination of the common-law defenses while contending that compensation rates were too low. However, the Michigan Labor Federation and similar groups supported the bill and it became clear the measure was going to pass.[35] Public Act 10 of 1912 passed on March 20, 1912, and took effect on September 1, 1912.

The legislation was a significant reform, but whether it was a grand bargain for injured workers, then or now, is open for debate. Does it still meet the principles of reasonable compensation, certainty of amount and payment, and payment without litigation? Workers' compensation laws will always be a charged political issue, and the pendulum will swing in the direction of whichever side has the power to change the law for its benefit. ■



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ENDNOTES

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2. *Id.*
3. *Id.* at p 18 and Friedman & Ladinsky, *Social Change and the Law of Industrial Accidents*, 67 Colum L Rev 50, 52 (1967).
4. *Social Change and the Law of Industrial Accidents*, 67 Colum L Rev at 51–53.
5. *Priestley v Fowler*, 150 Eng Rep 1030, 1032 (1837).
6. *Farwell v Boston & Worcester Railroad Corp*, 45 Mass 49, 56–57 (1842).
7. *Mich Central Railroad Co v Leahey*, 10 Mich 193, 198–199 (1862).
8. *Social Change and the Law of Industrial Accidents*, 67 Colum L Rev at 60–62.
9. *Id.* at 61.
10. *Id.* at 61–63.
11. Epstein, *The Historical Origins and Economic Structure of Workers' Compensation Law*, 16 Georgia L R 775, 787 (1982), available at <https://core.ac.uk/download/pdf/234109236.pdf>.
12. *Id.* at 787–791 and *Griffiths v Earl of Dudley*, 9 QBD 357 (1882).
13. Siegel, *History of the Enactment of the Workmen's Compensation Law in the State of Michigan*, MA thesis, Dept of History, Wayne State University (1940). Mr. Siegel later became a labor attorney and professor of law at Wayne State University.
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15. Witt, *The Transformation of Work and the Law of Workplace Accidents, 1842–1910*, 107 Yale L J 1467, 1467 (1998).
16. Roosevelt, "Sixth Annual Message to the Senate and House of Representatives" (December 3, 1906).
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18. 45 USC 53.
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21. *Ives v South Buffalo Railway Co*, 201 NY 271; 94 NE 431 (1911).
22. *History of the Enactment of the Workmen's Compensation Law*, p 44.
23. *Id.* at pp 57–63.
24. *Id.* at pp 63–64. See also Smith, *Employers' Liability*, 1 Mich Manufacturer 3, 3 (December 26, 1908).
25. *History of the Enactment of the Workmen's Compensation Law*, pp 72–78.
26. Wikipedia, *Political party strength in Michigan* (December 14, 2020) <https://en.wikipedia.org/wiki/Political _party_strength_in_Michigan> [https://perma.cc/92Y2-LS5F].
27. *History of the Enactment of the Workmen's Compensation Law*, p 84.
28. 1911 PA 245.
29. *History of the Enactment of the Workmen's Compensation Law*, pp 104–106.
30. Smith, *Report of the Employers' Liability and Workmen's Compensation Commission of the State of Michigan* (Lansing: Wynkoop, Hallenbeck Crawford Co, State Printers, 1911), pp 31–33.
31. *Id.* at pp 34–39 and *History of the Enactment of the Workmen's Compensation Law*, pp 108–109.
32. *Report of the Employers' Liability and Workmen's Compensation Commission* at p 35 and *History of the Enactment of the Workmen's Compensation Law* at pp 108–110.
33. *History of the Enactment of the Workmen's Compensation Law* at pp 110–113.
34. *Id.* at pp 114–115.
35. *Id.* at pp 114–123.