History of the Workers' Compensation Court
For the Senate Joint Resolution No. 23 Study

Prepared for the Revenue and Transportation Interim Committee
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As part of the Revenue and Transportation Interim Committee's consideration of the taxpayer appeal process, the committee asked for information on the historical context in which the Workers' Compensation Court was created and on the appeal process prior to the creation of the Court. This document responds to those requests.

Workers' Compensation History[1]

The Legislature created the Industrial Accident Board in 1915 to handle workers' compensation hearings.[2] The Board had three members. Two state agency positions included membership on the Board: one officer from the Department of Labor and Industry and the other from the Division of Vocational Rehabilitation. The governor appointed the third member, who served as chair of the Board and executive director of the agency.

The 1971 Executive Reorganization Act abolished the Industrial Accident Board and created the Workmen's Compensation Division, which was administratively allocated to the Department of Labor and Industry for administrative purposes only. The chairman of the former board served as administrator for the new Workmen's Compensation Division and assumed the authority previously shared by the three board members. However, this change from a board to single administrator was not a significant change in practice because, though actions by the chair of the board required the approval of the other board members, the other members rarely disagreed with the administrator. The Executive Reorganization did not affect the underlying workers' compensation laws.

Appeal of Board/Division Decisions

The 1915 enactment of workers' compensation laws included a section on appeals of Industrial Accident Board decisions. This appeal language remained in law until the 1975 Legislature created the Workers' Compensation Court, at which time the section was repealed. The relevant language of the section read as follows:

> "The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances

[1]Office of the Legislative Auditor, "Department of Labor and Industry Workmen's Compensation Division: Report on Review of Certain Insurance and Disability Compensation Operations," July 1974, p. 7-13. [later cited as Audit]

[2]Ch. 96, L. 1915.

of the case."[3]

The above language is unclear: it allows for additional evidence to be presented as part of a district court appeal but then states that the trial is "de novo." A de novo trial is generally understood to be a completely new trial as if no other trial has been held. The section then goes on to provide that the district court should determine whether to sustain the findings of the Industrial Accident Board, which sounds like a review rather than a new trial.[4]

As one might expect, the ambiguity of R.C.M. 92-834 resulted in a variety of district court interpretations of the admissibility of new evidence. The following is a summary of Supreme Court cases that illustrate how the courts interpreted this section of law over a number of years:

- *Dosen v. East Butte Copper Mining Co. (1927)*: The district court could make a new determination to the extent that new evidence was introduced in district court.
- *Sykes v. Republic Coal Co. (1933)*: The statute does not allow a full de novo trial in district court. If the statute does not include requirements on how the court should determine whether to take new evidence, persuasive reasons presented in the presence of opposing counsel is sufficient showing of "good cause."
- *Paulich v. Republic Coal Co. (1940)*: The Industrial Accident Board denied a rehearing and the claimant appealed to district court. The Supreme Court concluded that the Legislature "had in mind the granting of very broad powers to the district court on appeal." The opinion also provides that, if the Board fails to hold a hearing on appeal, the district court has the authority to determine the matter.
- *Murphy v. The Anaconda Co.* (1958): The Board ruled against a claimant seeking compensation for the death of her husband. The claimant presented new medical testimony in district court and the district court found for the claimant. The Supreme Court affirmed.
- *Lind v. Lind (1963):* The Board awarded nominal compensation until the claimant demonstrated loss of wages from his accident. The Board denied a rehearing and the claimant appealed to district court. The district court heard additional testimony and awarded partial permanent compensation. The Supreme Court reversed the district court and remanded the case to the Industrial Accident Board. The Supreme Court reasoned that "unreasonably broad interpretation of the 'additional evidence' provision would defeat the basic reason for submitting the controversy to an administrative agency, which is to obtain a speedy determination of the claim by a non-technical procedure..." The Court also found that the claimant had the option of making a later showing of loss of wages to the Board and did not have to resort to district court.
- *Obie v. Obie Signs (1963)*: This case reached a similar conclusion as the *Lind* case. The district court limited the introduction of new evidence because it believed the Board had not made a final determination.
- *Benoit v. Murphy Corporation (1964)*: The Board ordered nominal compensation for inhalation of a gas that affected the lungs until the claimant could demonstrate loss of wages. The defendant's insurance company appealed to district court, where new evidence was introduced by the defendant from the examining doctor. The district court upheld the Board's finding but awarded more compensation. The defendant appealed to the Supreme Court, arguing that the

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[3]"The board" refers to the Industrial Accident Board. The Workmen's Compensation Division is substituted for "the board" after the 1971 executive reorganization legislation. R.C.M. 92-834.

[4]Douglas M. Greenwood, "District Court Judicial Review in Montana Workmen's Compensation Cases," *Montana Law Review*, Volume 30, Issue 2, 1969, p. 5-6.

case should be returned to the Board. The Supreme Court affirmed the district court ruling, concluding that the *Lind* decision did not apply because the district court had jurisdiction and acted on the evidence presented.[5]

In "District Court Judicial Review in Montana Workmen's Compensation Cases," Douglas M. Greenwood states that the effect of *Paulich* is to require claimants to follow rules of evidence and technical rules, in direct contrast to what was intended to be an advantage of an administrative hearing before the Board. Greenwood asserts, "The *Paulich* ruling went far indeed towards making a hearing before the Industrial Accident Board a sham contest before the real trial in District Court." Greenwood also argues that the result in *Murphy* "fosters concealment and is an inducement to inefficient procedure" and that the result was a more litigious workers' compensation system.

The conclusion Greenwood reaches from the cases in the 1960s is that the Supreme Court moved towards limiting the presentation of new evidence in district court and strengthening the discretion of the Industrial Accident Board.[6] Greenwood proposed at the end of the article that the statute addressing review of Industrial Accident Board decisions should be amended to require that all evidence be presented before the Board.[7]

The above information was presented in a *Montana Law Review* article that appeared in 1969. No record of the issues raised here appears in the testimony or other reports examined for this history but there was obviously some attention given to the matter, at least in the legal community.

National Commission on State Workmen's Compensation Law

Modern workers' compensation laws were intended to be self-administering based on the no-fault principle: the employer would accept liability without fault and make payments to the injured worker. The costs associated with worker injuries were absorbed and considered to be costs of production. A National Commission on State Workmen's Compensation Law was formed in the early 1970s as it became apparent that workers' compensation laws were not self-administering and were resulting in litigation. The Commission issued a formal report on July 31, 1972, with the conclusion that workers' compensation laws in general were inadequate and inequitable. The Commission issued 19 recommendations considered to be the essential elements of a workers' compensation program. Prior to 1973, Montana met four of the 19 recommendations.

The 1973 Legislature made major changes to the workers' compensation laws in response to these recommendations. The biggest change was the requirement for compulsory-comprehensive workers' compensation insurance coverage for nearly all employees. Prior to these changes, coverage was only required for hazardous occupations and coal mining.

Attempt at Reorganization

A bill introduced in the 1973 Legislature would have transferred the operations of the Workmen's

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[5]Greenwood, p. 6-10

[6]Greenwood, p. 7-8.

[7]Greenwood, p. 16.

Compensation Division to the Department of Labor and Industry (DLI). The administrative attachment of the Division to DLI meant that the division was nearly autonomous except that budget requests had to be submitted through DLI. The bill was carried over to the 1974 session but the Legislature did not take any action on it.

A Legislative Audit Raises Questions About Agency Organization

In 1974, the Office of the Legislative Auditor reviewed the Workmen's Compensation Division. A letter introducing the audit states that the audit "was undertaken subsequent to the Department of Administration audit because of unresolved issues and controversy surrounding the workmen's compensation program."[8] The Department of Administration audit referenced was done the previous year and was limited in nature.[9]

The legislative audit of the Workmen's Compensation Division raised concerns that the Division's administrator had "dual roles" because organizationally the Insurance Fund Bureau was within the Workmen's Compensation Division. As such, the administrator enforced workers' compensation laws and was the administrator and chief executive of the state insurance program. The state insurance program was the "largest single insurance company writing workmen's compensation insurance in the state."[10] The audit states that these two roles "are not compatible and result in a conflict of interest."[11]

The audit made the following recommendation related to agency organization: "Enact legislation to (1) organizationally separate the state insurance program from the present Workmen's Compensation Division and establish it as a separate entity within the Department of Labor and Industry, and (2) vest the remaining organizational units of the Workmen's Compensation Division with the power, authority, and responsibility to administer and enforce the workmen's compensation laws."[12]

The Workmen's Compensation Division "very strongly" disagreed with the above audit recommendations. The Division recognized the conflict of interest but suggested separating the contested case hearings function rather than the state insurance program. The Division's response also claimed that consideration of the issue during the 1973-1974 interim resulted in some consensus that the hearings function should be removed from the Division and transferred to a new board. Proposed

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[8]Audit, p. 1.

[9]Audit, p. 1.

[10]There are three methods for employers to obtain workers' compensation coverage: to self insure by providing proof to the state that the employer has the financial ability to pay the benefits required by law, to obtain insurance from a casualty insurance company authorized by the state, or to participate in the state compensation insurance program. The state compensation insurance program is required to insure any employer requesting coverage. As of June 30, 1973, 8,173 employers participated in the state compensation insurance program compared with 71 employers that self insured and 8,243 that obtained coverage from an approved casualty insurance company. Audit, p. 3, 134-135.

[11]Audit, p. 135.

[12]Audit, p. ix.

language outlines a 3-person quasi-judicial board subject to the Montana Administrative Procedure Act (but not rules of evidence). The reasons cited for separating the appeals rather than the state insurance program are: cost to the employer, concern about competition with private insurance carriers, and erosion of the "social concern" with which claims are treated by the state insurance program as administered by the Division.[13]

The Commissioner of DLI agreed in part with the audit recommendations and in part with the Division response. (Recall that the Workmen's Compensation Division was only administratively allocated to DLI.) The Commissioner agreed with the audit recommendation that the state insurance program be separated from the Workmen's Compensation Division but advocated for including the operations of the Workmen's Compensation Division within DLI rather than continuing the administrative allocation. The Division and the Commissioner agreed on creating a workers' compensation appeal board.

The audit was quite extensive and also raised concerns related to lump-sum settlements, methods of negotiating settlements, documentation, the administrator's involvement in disputes, and improper internal procedures.

Select Committee on Workmen's Compensation

The 43rd Legislature passed Senate Joint Resolution No. 70 directing a select committee to study "all aspects of the Workmen's Compensation Act." The "Whereas" clauses of the study resolution offer some additional historical context. The audit of the Workmen's Compensation Division was occurring while the 43rd Legislature was in session in 1974. A select committee was requested because "it is essential that the legislature be prepared, when the audit report is published, to immediately begin working on legislation dealing with the Workmen's Compensation Act and the Workmen's Compensation Division which is deemed necessary or desirable from the results of the audit report." The resolution also mentioned that there was a great deal of legislation addressing workers' compensation during the 43rd Legislative Session.

In addition, an introduction to the final report of the Select Committee mentions that the Workmen's Compensation Division "had been the subject of a great amount of controversy and rumor during the Forty-third Legislature." The Attorney General was even involved because "criminal activities had been uncovered."[14]

The Select Committee was a bipartisan committee with four members from the Senate and four members from the House. The committee was directed to meet during the interim and to receive the auditor's report and hold public hearings "for the purpose of ascertaining the need for legislation dealing with the Montana Workmen's Compensation Act."

The Select Committee members attended the Legislative Audit Committee meeting that included presentation of the audit of the Workmen's Compensation Division. The Select Committee held its first meeting the next day and requested staff research on a number of topics. The two relevant for the creation of the Workers' Compensation Court were:

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[13]Audit, p. 200-202.

[14]"Interim Study by the Select Committee on Workmen's Compensation," December 1974, p. 1.

- determine whether other states have a three-member board or a single administrator to administer their workers' compensation laws; and
- research the area of appellate and administrative review of workers' compensation cases.[15]

After receiving the results of the above research and hearing public comment at the second meeting, the Select Committee assigned specific members to work with staff on preparing recommendations in a few different areas, one of which was how workers' compensation should be fixed -- by a commission, an administrator, a review board, an appeal board, or an administrative judge. The Select Committee finalized recommendations and proposed legislation at the final two meetings.[16]

One of six recommendations of the Select Committee was for the enactment of proposed legislation creating the Office of the Workmen's Compensation Judge. The goal of the draft legislation, LC0058, was to eliminate the dual role conflict raised in the audit. The Legislative Auditor recommended alleviating this concern by separating the state insurance fund from the Workmen's Compensation Division. Instead, the select committee recommended removing the adjudicative function by creating a workers' compensation judge.[17]

An analysis of the proposed legislation provides some insight into the select committee's thought process related to requirements of the judge and appeal of the judge's decision. The select committee felt the office was judicial in nature and, as such, the person holding it should have the qualifications of a district court judge. The select committee decided on direct appeal to the Montana Supreme Court for three reasons:

- to speed up final adjudication in hopes of resolving injured workers' claims quickly;
- an appeal to district court would be a lateral move causing expense and delay because the worker's compensation judge would have the qualifications of a district court judge and be an expert in workers' compensation; and
- a large number of appeals were not expected because the workers' compensation judge was expected to be an expert in the field.[18]

Action of the 1975 Legislature

The Select Committee's proposed LC0058 was introduced in the 44th legislative session as House Bill No. 100. The Legislature passed the bill with some amendments from the select committee version, but no substantive changes were made to the qualifications and appointment of the judge or to the direct appeal to the Supreme Court.

The Acting Director of the Workmen's Compensation Division did request an amendment to provide that

[15]"Interim Study by the Select Committee on Workmen's Compensation," December 1974, p. 3.

[16]"Interim Study by the Select Committee on Workmen's Compensation," December 1974, p. 3-4.

[17]"Interim Study by the Select Committee on Workmen's Compensation," December 1974, p. 5.

[18]"Interim Study by the Select Committee on Workmen's Compensation," December 1974, p. 6.

the judge not be bound by common law and statutory rules of evidence.[19] The Legislature adopted this amendment but reversed course in 1987. Section 39-71-2903 now provides that the workers' compensation judge is bound by common law and statutory rules of evidence.

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[19]Minutes of the House Labor and Employment Relations Committee, January 29, 1975.