

## Risk Management for Enterprises and Individuals

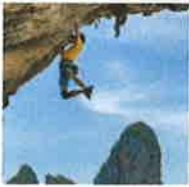
This book is intended for the Risk Management and Insurance course where Risk Management is emphasized. Risk management will be a major focal point of business and societal decision—making in the 21st century. A separate focused field of study, it draws on core knowledge bases from law, engineering, finance, economics, medicine, psychology, accounting, mathematics, statistics and other fields to create a holistic decision-making framework that is sustainable and value-enhancing. This is the subject of this book.



### Front Matter



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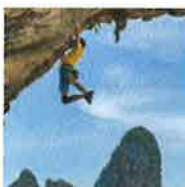
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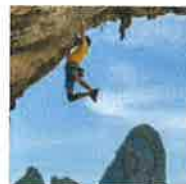
### 4: Evolving Risk Management - Fundamental Tools



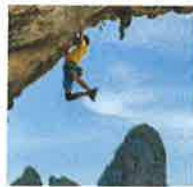
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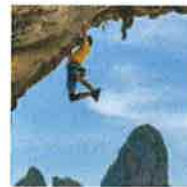
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# Risk Management for Enterprises and Individuals

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## 16.3 Workers' Compensation Issues

### LEARNING OBJECTIVES

In this section we elaborate on several issues that workers' compensation insurers must contend with, including the following:

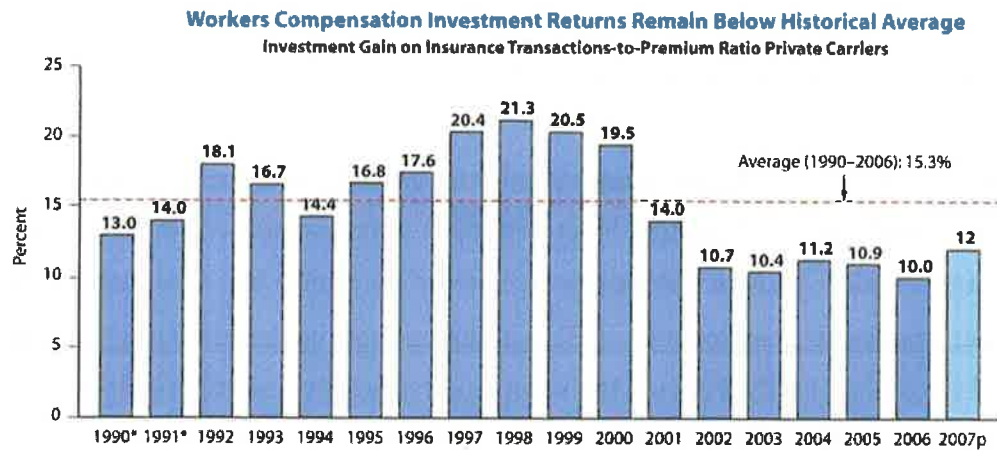
- Cost drivers and reform
- Erosion of exclusive remedy
- Scope of coverage

As noted by the National Council of Compensation Insurance (NCCI), despite the improved results of the workers' compensation line, the following are challenging issues faced by the industry:

- Catastrophes such as terrorism
- Cost drivers and reform
- Capacity
- Adequate reserves
- Privacy
- Erosion of exclusive remedy and scope of coverage
- Mental health claims
- Black lung
- The Americans with Disabilities Act (ADA)
- Ergonomics

Coverage for terrorism is a major issue for workers' compensation. The problem has been somewhat alleviated by the relaunch of the Terrorism Risk Insurance Act (TRIA) of 2002 as the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA), which provides protection until December 31, 2014. It is not a permanent solution, so the stakeholders are working on permanent solutions, including overall catastrophe pools.

As noted earlier, medical inflation, in addition to increased benefits through reforms in the states and attorney fees, have cost the system a substantial amount of extra expenses and caused escalation in



\* Adjusted to include realized capital gains to be consistent with 1992 and after.

*Investment gain on insurance transactions includes other income.*

Source: Dennis C. Mealy, FCAS, MAAA, National Council on Compensation Insurance (NCCI), Inc. Chief Actuary, "State of the Line" Annual Issues Symposium (AIS), May 8, 2008, accessed March 28, 2009, <https://www.ncci.com/documents/AIS-2008-SOL-Complete.pdf>. © 2008 NCCI Holdings, Inc. Reproduced with permission.

The next issue, privacy, has been discussed in prior chapters. This is an issue engulfing the whole industry and is relevant to the workers' compensation line because of the medical and health components of this coverage. How to protect individuals' health information from being identified and transmitted is the industry's concern.

Employers, of course, benefit from having their liabilities limited to what is stipulated in workers' compensation laws. When the benefits received by workers are a close approximation of what would be received under common law, employees receive a clear advantage as well from the law. Today, however, there is a perception that workers' compensation provides inadequate compensation for many injuries. With high awards for punitive and general damages (neither available in workers' compensation) in tort claims, workers often perceive the exclusivity of compensation laws as inequitable.

As a result, workers attempt to circumvent the exclusivity rule. One method is to claim that the employer acts in a dual capacity, permitting the employee an action against the employer in the second relationship as well as a workers' compensation claim. For example, an employee injured while using a product manufactured by another division of the company might seek a products liability claim against the employer. Dual capacity has received limited acceptance. Consider the case of an employee of Firestone tires who uses the employer's commercial auto with Firestone tires to

The other issue regarding repetitive activities that cause stress and carpal tunnel syndrome is still under consideration at the time of writing this text, as noted in “Should Ergonomic Standards be Mandatory?”

## Should Ergonomic Standards Be Mandatory?

In the waning days of the Clinton administration, the Occupational Safety and Health Administration (OSHA) issued sweeping new guidelines for ergonomics in the workplace. Ergonomics refers to the design and arrangement of workplace equipment in order to maximize worker safety, health, comfort, and efficiency. The new standards, which applied to all industries and nearly all types of businesses, both large and small, placed the ergonomic burden on employers (and, through them, on the states' workers' compensation insurance industry, which would be responsible for implementing the new rules). Every company was required to set up a program to manage ergonomics, including worker training, analysis and elimination of risk factors, and identification of musculoskeletal disorder (MSD) injuries. Of most concern to the insurance industry was a provision that mandated a set level of compensation for MSD injuries. By requiring compensation for ergonomic injuries to be between 90 and 100 percent of a worker's salary, OSHA was infringing on state workers' compensation systems, which awarded injured workers only 67 percent, on average, of their salaries up to a certain maximum.

Controversial from the start, the ergonomic standards were overturned by Congress in April 2001 just after George W. Bush took office. Working with the insurance industry, OSHA has since launched a voluntary program to reduce ergonomic injuries.

A review of OSHA activities (available at its Web site, <http://www.osha.gov/SLTC/ergonomics/index.html>) reveals that OSHA developed a “four-pronged comprehensive approach to ergonomics designed to quickly and effectively address musculoskeletal disorders (MSDs) in the workplace.” The following are four segments of OSHA's strategy for reducing injuries and illnesses from MSDs in the workplace:

- Guidelines
- Outreach and assistance
- Enforcement
- National advisory committee

“Federal Regs Threaten State WC System,” *National Underwriter, Property & Casualty/Risk & Benefits Management Edition*, August 19, 2002; Mark A. Hofmann, “Senate Committee Approves Ergo Rule Bill,” *Business Insurance*, June 19, 2002, accessed March 31, 2009, <http://dev.businessinsurance.com/cgi-bin/news.pl?id=999>; Steven Brostoff, “Ergonomic Rule Bill Moves,” *National Underwriter Online News Service*, June 19, 2002; Steven Brostoff, “Insurance Groups Support Ergo Plan,” *National Underwriter, Online News Service*, August 27, 2002; Arlene Ryndak and Julie L. Gackenbach, “Congress Should Not Tie OSHA’s Hands on Ergonomic Regulations,” *National Underwriter, Property & Casualty/Risk & Benefits Management Edition*, May 20, 2002; “Risk Managers, Insurers Get a Break on Ergonomics,” *National Underwriter, Property & Casualty/Risk & Benefits Management Edition*, April 22, 2002; Steven Brostoff, “New Ergonomics Bill Draws Insurer Ire,” *National Underwriter, Property & Casualty/Risk & Benefits Management Edition*, April 29, 2002; Caroline McDonald, “Insurers: New OSHA Ergo Plan Okay,” *National Underwriter Online News Service*, April 5, 2002; OSHA’s Web site at <http://www.osha.gov/SLTC/ergonomics/index.html> (accessed March 28, 2009).

## KEY TAKEAWAYS

In this section you studied the major issues faced by workers’ compensation insurers:

- High reimbursement rates of medical costs contribute to the poor combined ratio of workers’ compensation.
- Attorney involvement in the cases of injured workers inflates costs.
- Perceptions of workers’ compensation as inadequate in indemnifying injured employees encourages workers to circumvent the exclusivity rule.
- Broadening the scope of workers’ compensation coverage increases the number of claims.

## DISCUSSION QUESTIONS

1. Why might workers’ compensation be viewed as preferential to nonoccupational health coverage? Does this create any incentives for anyone within the system?
2. In what ways can the exclusivity rule be circumvented by employees?
3. Do you disagree with any of the ways that the scope of workers’ compensation coverage has been broadened over the years? Explain.