

The Tragedy Of September 11th Reveals Failings In Workers' Compensation Systems

Broken Promises Cause Workers To Seek Supplements To Inadequate Benefits.

By John B. Boyd¹ & Jon L. Gelman²

Although the road to compensating the victims of September 11, 2001, and their families has been paved with the best of intentions, the response to the economic impact of the attacks has as yet been disorganized. The outpouring of charitable contributions has led to front-page battles over their administration, and the federal compensation program has been subject to similar criticism from the very people it is intended to serve.

Collateral, makeshift remedies have failed to act as a safety net. The Salvation Army, in a noble gesture to ameliorate the inadequacy of the compensation system, raised more than \$60 million for victims of the Sept. 11 attacks. Its idea of paying household bills for these victims, has shown that its technology for processing and writing checks was overwhelmed. "And now, in fresh proof of how the scale of Sept. 11 can overwhelm even the best-established and most-admired charities, thousands of families have discovered that their bills never got paid." Henriques, D.B., "Charity Overwhelmed in Bid to Meet Attack Victims' Bills", *NY Times*, January 5, 2002.

What's missing from such front-page scrutiny is the recognition of the failure of states' workers' compensation systems to adequately provide for all victims of occupational injury, illness and death. What's missing is a realization of the decades of broken promises from which those systems were born at the turn of the 20th Century. Working women and men gave up their ability to sue for injury and disease caused by workplace risks, in exchange for industries' promises to provide adequate compensation and prompt medical treatment.

Each year, our states' legislatures address these very same issues in fierce debate, as attempts to remedy inadequate workers' compensation systems are pitted against consideration of the costs to business. In the year 2000, workplace injuries accounted for 5,291 deaths in America. See, Minino AM, Smith BL, Deaths: Preliminary Data for 2000, 49 *NVSR* 12, National Center for

¹ John B. Boyd, who practices in Kansas City, MO, is Treasurer of WILG. jboyd@boydkenterlaw.com

² Jon L. Gelman, who practices in Wayne, NJ is the author of Workers Compensation Law (West Group) and Vice-President of WILG. jon@gelmans.com

Health Statistics, 2001. In 1999, 5,651 American workers died as a result of work-related injuries or illnesses.

The economic impact of these annual losses is largely unreported, unstudied, and unknown. If the aftermath of terrorism has caused America to question the adequacy of our national security system, it is not wrong to examine the adequacies of existing state and federal workers' compensation laws. Every day, brave public safety officers risk their lives to preserve and protect people they do not know. Fire, police, and EMS workers die every year as a result of workplace risks, and so do those who build the bridges, roads and buildings we take for granted.

As an analogy, the influenza virus is, every year, responsible for tens of thousands of deaths nationwide, and millions of dollars' worth of lost productivity. Although the impact of a bioterrorist attack using anthrax or smallpox would be catastrophic, improved efforts at influenza vaccination should not be ignored or abandoned in a mad rush to deal with the immediate threat. In fact, the fight against influenza promises to increase our knowledge of how to deal with infectious disease outbreaks in general. Similarly, the "endemic" issues of inadequate workers' compensation systems cannot be ignored, even in the face of a sudden and catastrophic "epidemic" of legal issues arising from the September 11 attacks.

To illustrate the inadequacies of what the states' workers compensation systems provide to survivors of occupational death, imagine a massive and simultaneous terrorist attack on each of the fifty state capitols with the state legislatures in session. What would the surviving spouses or minor children of our elected officials receive in workers' compensation benefits? The following table illustrates the legislator's average weekly wage and the resulting compensation rate, as compared to the states' maximum compensation rate.

Just as the terrorist actions on September 11, 2001 illustrate inadequacies in security and safety, they have shown how surviving families cannot carry on without substantial charity and governmental assistance. Is now the time for a fundamental reconsideration of whether workers' compensation systems are working as intended, and, promised?

2001 State Legislator Compensation for Death

| STATE | WEEKLY SALARY | MAX ALLOWED | SPOUSE ONLY | SPOUSE & CHILD(REN) | MAX BURIAL |
|-------|---------------|-------------|-------------|---------------------|------------|
| AL | \$706.15 | \$531.00 | \$353.08 | \$470.30 | \$3,000 |
| | | | | | |

| | | | | | |
|------|------------|----------|----------|----------|----------|
| AK | \$1,266.77 | \$762.00 | \$729.65 | \$729.65 | \$5,000 |
| AZ | \$811.54 | \$369.27 | \$369.27 | \$369.27 | \$5,000 |
| AK | \$720.56 | \$410.00 | \$252.20 | \$410.00 | \$6,000 |
| CA | \$2,508.85 | \$490.00 | \$490.00 | \$490.00 | \$5,000 |
| CO | \$1,071.92 | \$593.81 | \$593.81 | \$593.81 | \$7,000 |
| CT | \$538.46 | \$838.00 | \$290.77 | \$290.77 | \$4,000 |
| DE | \$642.31 | \$539.52 | \$427.78 | \$513.85 | \$3,500 |
| D.C. | \$1,778.85 | \$948.76 | \$889.43 | \$948.76 | \$5,000 |
| FL | \$1,031.54 | \$571.00 | \$515.77 | \$571.00 | \$5,000 |
| GA | \$951.54 | \$375.00 | \$375.00 | \$375.00 | \$7,500 |
| HA | \$1,015.38 | \$547.00 | \$507.69 | \$547.00 | \$8,205 |
| ID | \$795.88 | \$297.00 | \$297.00 | \$297.00 | \$6,000 |
| IL | \$1,497.85 | \$956.32 | \$956.32 | \$956.32 | \$4,200 |
| IN | \$783.08 | \$508.00 | \$508.00 | \$508.00 | \$6,000 |
| IA | \$829.19 | \$996.00 | \$477.61 | \$477.61 | \$5,000 |
| KS | \$807.20 | \$401.00 | \$401.00 | \$401.00 | \$5,000 |
| KY | \$1,258.40 | \$397.55 | \$397.55 | \$397.55 | \$4,000 |
| LA | \$953.46 | \$388.00 | \$309.87 | \$388.00 | \$5,000 |
| ME | \$706.54 | \$458.83 | \$406.96 | \$406.96 | \$7,000 |
| MD | \$1,235.94 | \$668.00 | \$668.00 | \$668.00 | \$5,000 |
| MA | \$1,463.90 | \$830.89 | \$830.89 | \$830.89 | \$4,000 |
| MI | \$1,719.23 | \$644.00 | \$644.00 | \$644.00 | \$6,000 |
| MN | \$928.84 | \$750.00 | \$464.42 | \$618.07 | \$15,000 |

| | | | | | |
|----|------------|----------|----------|----------|------------|
| MS | \$617.31 | \$316.46 | \$216.06 | \$316.46 | \$2,000 |
| MO | \$946.94 | \$599.96 | \$599.96 | \$599.96 | \$5,000 |
| MT | \$795.40 | \$439.00 | \$439.00 | \$439.00 | \$4,000 |
| NE | \$655.77 | \$508.00 | \$436.74 | \$491.83 | \$6,000 |
| NV | \$650.00 | \$580.72 | \$432.90 | \$432.90 | \$5,000 |
| NH | \$3.85 | \$923.00 | \$184.60 | \$184.60 | \$5,000 |
| NJ | \$673.08 | \$591.00 | \$336.54 | \$471.16 | \$3,500 |
| NM | \$680.00 | \$492.98 | \$452.88 | \$452.88 | \$7,500 |
| NY | \$1,528.85 | \$400.00 | \$400.00 | \$400.00 | No cap |
| NC | \$788.29 | \$620.00 | \$525.00 | \$525.00 | \$3,000 |
| ND | \$705.00 | \$497.00 | \$469.53 | \$469.53 | \$6,500 |
| OH | \$993.73 | \$618.00 | \$618.00 | \$618.00 | \$3,200 |
| OK | \$1,253.46 | \$473.00 | \$473.00 | \$473.00 | \$5,000 |
| OR | \$721.08 | \$838.16 | \$480.24 | varies | \$7,210.80 |
| PA | \$1,810.19 | \$644.00 | \$644.00 | \$644.00 | \$3,000 |
| RI | \$216.08 | \$653.00 | \$143.91 | \$172.86 | \$5,000 |
| SC | \$675.00 | \$532.77 | \$449.55 | \$449.55 | \$2,500 |
| SD | \$780.77 | \$448.00 | \$448.00 | \$448.00 | \$5,000 |
| TN | \$937.31 | \$562.00 | \$468.65 | \$562.00 | \$7,500 |
| TX | \$758.46 | \$533.00 | \$533.00 | \$533.00 | \$6,000 |
| UT | \$1,185.00 | \$450.00 | \$450.00 | \$450.00 | No cap |
| VT | \$1,035.00 | \$790.00 | \$689.31 | \$790.00 | \$6,500 |
| VA | \$921.15 | \$606.00 | \$606.00 | \$606.00 | \$10,000 |

| | | | | | |
|----|------------|----------|----------|----------|------------|
| WA | \$1,026.62 | \$821.77 | \$615.97 | \$718.63 | \$8,212.96 |
| WV | \$713.46 | \$490.55 | \$490.55 | \$490.55 | No cap |
| WI | \$1,292.56 | \$582.00 | \$582.00 | \$582.00 | \$6,000 |
| WY | \$1,025.00 | \$504.88 | \$504.88 | \$504.88 | \$2,500 |