One of the fundamental purposes of workers’ compensation programs is to provide compensation to individuals who have suffered a loss as the result of a workplace illness or injury. However, compensation of fatal injuries raises two issues not presented by non-fatal claims. First, in a fatal claim the individual who most immediately suffers the loss and who is ostensibly covered by workers’ compensation is no longer available to receive benefits. This raises questions as to whether any person suffered a compensable loss, and, if so, who? Second, once the program has identified a person or persons who are entitled to compensation, the Workers’ Compensation Board must then determine the extent of their loss. While this is often a complicated exercise in non-fatal accidents that involve disability, it is even more difficult for fatal injury claims, raising profound philosophical questions about the value of human life.

The purpose of this report is to examine the underlying rationale for the compensation of occupational fatalities by workers’ compensation programs, to review current practice in North America, to discuss available policy options, and to provide recommendations to the Royal Commission on Workers’ Compensation in British Columbia.

This report has three parts. The first examines relevant economic considerations providing a basis for the evaluation of fatal injury compensation issues addressed later in the report. This includes a discussion of the impact of fatal benefits on workplace safety, the labour force participation of compensation beneficiaries, and administrative costs. This section also reviews the “value of life” methodology used by economists to determined the loss associated with a fatal injury compensation. The second part of the paper reviews the law relating to the compensation of
fatal injuries, including work and non-work related injuries. Finally, the third part of the paper analyzes the problem of fatal injury compensation in light of the extant law – and its underlying rationale. Recommendations are provided with respect to the issues identified in the previous analysis.

**Economics Considerations**

Economists typically evaluate public policy using two criteria: equity and efficiency. Efficiency refers to the relative costs and benefits of a proposed policy option. An efficient policy is one that maximizes benefits net of costs. Equity, on the other hand, refers to the distribution of those costs and benefits. While a precise and universally accepted definition is elusive, many believe that, in the context of workers’ compensation, equity requires that similarly situated claimants be treated similarly. This means that claimants who suffer identical losses should receive identical compensation. Of course, the definition of terms such as “similarly situated” or “identical losses” is subject to considerable debate. For these reasons economic analysis tends to focus on the efficiency criterion, while acknowledging that an inefficient, equitable policy may be preferred to an inequitable, efficient one.

**The Economics of Fatal Injury Compensation**

Evaluation of the economic efficiency of fatal injury compensation requires an analysis of the impact of fatal benefits on the behavior of workers and employers. Three effects deserve consideration. First, the existence of compensation benefits affect the pre-injury behavior of employers and workers in ways that would, in turn, affect injury rates. Second, we may expect that compensation also affects the post-injury labor market behavior of compensation beneficiaries. Finally,
the process of determining of the extent of loss for the purpose of compensation entails adminis-
trative or, in economics parlance, transaction costs that may not be insignificant. This section will
discuss each in turn.

**Economic theory of work injuries:** Occupational injuries and illnesses are necessary by-
products of the production process that impose costs on both employers and workers. The cost of
accidents incurred by workers include lost wages and lost wage-earning capacity, medical and re-
habilitation expenses, and non-pecuniary loss, such as pain and suffering and loss of enjoyment of
leisure activities. Employer also incur costs, which include the damage to plant and equipment as
well as losses due to the interruption of production processes, and these costs can be expected to
increase production costs directly. Worker costs may be shifted to employers through the mecha-
nism of the compensating wage differential or risk premium. That is, since, everything else equal,
workers would prefer safe jobs to risky ones, hazardous employers will be forced to pay higher
wages to workers than safe employers in order to attract labour in a competitive market. To the
extent that a risk premium develops, production costs will also be related to the worker’s cost of
injuries.

By raising production costs, work injuries have two effects on economic activity. First, as
injury rates and production costs rise, so do product prices. To paraphrase Lloyd George: the
price of the product bears the blood of the working man. Since demand is negatively related to
price, we can expect that as the cost of workplace injuries and product prices rise, the demand for
goods produced by risky production processes will fall relative to the demand for goods produced
with less risky technologies. On average, workplaces will become safer, since some hazardous
jobs will be driven out of the market. Long-term trends in the proportion of the workforce en-
gaged in risky employment offer supporting evidence for this relationship (Durbin and Butler, 1998)

Second, higher production costs provide employers with incentives to invest in workplace safety. The incidence and, to some extent, the severity of work injuries are at least partially affected by the behavior of employers and workers. Employers can lower injury rates in a variety of ways – for example, by providing safety training to supervisors and employees, by modifying plant and machinery, or by providing workers with personal protective equipment, such as hard hats and safety shoes. However, since these activities are costly, employers will only make these safety investments when the benefits, in terms of reduced accident costs, exceed the costs of the investment.

Benefits paid to injured workers or to the families of fatally injured workers potentially represent another cost of workplace accidents for employers. The word “potentially” is used advisedly, because under certain conditions, economists believe that benefits will not affect employer costs. Specifically, if workers are mobile and possess good information about the expected cost of work accidents, then the compensating wage differential that develops due to workplace risk will be exactly equal to the worker’s expected cost of injury. To the extent that workers (or their families) receive *ex post* compensation for injuries, these benefits will be completely offset by a reduction in the wage premium, so that employer costs are unaffected. However, if workers do not have good information about the risks or cost of injury or if there are barriers to mobility, then a different result is obtained: workers’ compensation benefits will affect employer accident costs.¹

¹ As discussed below, there are good reasons to believe that workers, in fact, do not have good information about the relative risk of injury.
Nonetheless, the impact of compensation benefit costs on employer behavior will largely depend on whether the firm is *experience-rated*. To understand the significance of this term it is necessary to briefly review the way in which workers’ compensation benefits are financed.

In all North American jurisdictions, workers’ compensation benefits are financed through an employer payroll tax. In most, tax rates are established through a two-stage process. In the first stage, employers are grouped into classifications according to their risk profiles; in other words, employers with similar risks are assigned to the same category. A base assessment rate is computed based on the accident experience of the rate group, so that the base rate for firms in high risk rate groups, such as mining or construction, is higher than the rate for firms in low risk groups, such as financial institutions. In the second stage, the base assessment rate is modified according to the firm’s own accident experience. Firms that incur benefit costs higher than average for their rate group will have their assessment rates raised, while firms that incur lower than average benefit costs will have their rates reduced. The extent to which the base assessment is modified by firm experience varies both across jurisdictions and -- for some jurisdictions -- across firms. Modification of firm assessment rates according to firm accident experience is known as experience rating. When there is a one-to-one relationship between firm benefit costs and firm assessments, the firm is said to be perfectly experience-rated.

If the workers’ compensation assessments are not experience-rated, then employer safety incentives are reduced, since the firm’s compensation costs are only marginally affected by its own experience.\(^2\) However, to the extent that there is a relationship between benefit payments and firm

\(^2\) Since an occupational accident can result in employer costs unrelated to workers’ compensation – such as interrupted production or damaged equipment – the employer continues to have incentives to reduce the incidence of accidents even where compensation benefits are not financed by the employer.
compensation costs, the firm has an additional incentive to reduce the incidence and severity of accidents. And there is substantial evidence indicating that experience-rating is, in fact, associated with a decline in the occupational injury rate. Moreover, most studies that have examined the issue have found that benefit levels are negatively related to the fatal injury rate for experience-rated employers.

In other words, a potential economic effect of paying benefits for occupational fatalities is that the incidence of these fatalities will decline. This is particularly true where employer compensation costs are experience-rated.

While this analysis suggests that by paying fatality benefits, workers’ compensation programs provide employers with an added incentive to increase workplace safety and thus deter further workplace fatalities, it does not tell us whether this added deterrence is appropriate or desirable. It is possible for deterrence to be excessive. Furthermore, the analysis provides little insight about the optimal level of benefits.

Optimality: Work injury deterrence is optimal when the joint costs of accidents and accident prevention are minimized. Joint costs are minimized at the point where the additional dollar spent to reduce the frequency or severity of accidents is exactly equal to an additional dollar of savings in the form of reduced accident costs. Economic theory suggests that -- in a competitive labour market where workers are mobile and possess good information about workplace risks --

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3 See Hyatt and Thomason (1998) for a review of this literature.

4 For example, one way to completely eliminate fatal injuries – perhaps the only way -- in hazardous employment like coal mining would be to prohibit employers from engaging in these activities altogether. However, prohibition has obvious economic costs, and it is unlikely that employers, workers, or society-at-large would endorse this policy. Similarly, it is possible to increase production costs, perhaps through high benefit payments to injured workers, to levels where it is no longer economic to produce.
employers make optimal investments in safety in the absence of workers’ compensation.  

5 This occurs because the employer pays for worker accident costs in the form of a compensating wage premium for hazardous employment. The rational employer, when making decisions concerning safety, will minimize his own joint costs of accidents and accident prevention. Since employers must consider all injury costs – the workers’ costs as well as his own – the employer’s profit maximizing decision will be identical to the socially optimal one. Since workers, in the absence of compensation insurance, will continue to suffer a loss as the result of a workplace injury, they too will have incentives to avoid accidents.

The introduction of workers’ compensation benefits that are financed by a perfectly experience-rated employer payroll tax will not alter employer incentives, under the standard competitive market assumptions, so that firms continue to make socially optimal safety decisions. However, the introduction of compensation benefits means that workers are subject to what is termed “moral hazard” problems. Because workers are now protected against part of the loss due to injury, we can expect that they will take less care on the job, resulting in a greater than optimal incidence of workplace injuries. This is known as risk bearing moral hazard. In addition, we may also expect that workers will have a greater incentive to report injuries. These newly reported injuries could be the result of work accidents that would have otherwise gone unreported. Alternatively, these injuries could be the result of off-the-job accidents that the worker is reporting as work-

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5 As will be seen, there are reasons to question whether assumptions of worker mobility and complete information are reasonable.

6 If workers’ compensation is imperfectly experience-rated, which is the case in most North American jurisdictions, then the injury rate will be too high, since employers will not take all accidents costs into account and will, therefore, under-invest in safety.

7 Workers may be reluctant to report injuries due to the attendant costs. For example, they may not wish to suffer the productivity loss due to their “work ethic”, they may not wish to lose the chance of overtime work at premium rates, or they may fear employer recrimination.
related in order to receive compensation. Both moral hazard problems potentially reduce social welfare.

In addition, there are reasons to doubt whether workers have good information about workplace risks. Evidence from psychological studies suggests that workers overestimate the probability of low probability events and underestimate the probability of high probability events (Viscusi 1993). Line A in Figure 1 depicts this relationship between actual and perceived probability where perceived probability is measured on the vertical axis and actual probability is measured on the horizontal axis. This relationship may be contrasted with that depicted by line B, which is the relationship for workers who are able to accurately predict event probabilities. Since the slope of line A is less steep than that for line B, this graph implies that an increase in actual probability will result in a smaller increase in perceived probability. For example, as depicted here, perceived probability only increases by 0.08 for every 0.1 increase in actual probability.

In the context of work injury risks, this graph suggests that workers underestimate the additional risk associated with moving from a relatively risk-free job to a more hazardous one. As a consequence, we can expect that the risk differential will not be fully compensating, so that the injury rate will be too high.
For example, assume that an employer is contemplating adoption of a safety measure that reduces the injury probability from 0.2 to 0.1. Assume further that, on average, worker accident costs equal $1000. A worker whose probability perceptions are represented by line A in Figure 1 would (inaccurately) perceive that the safety measure reduces injury risks by 0.08. As a result, he would be only willing to accept an $80 wage reduction if the employer were to adopt the measure. Consequently, the employer will fail to adopt measures that cost more than $80, although all measures costing less than $100 – the associated reduction in expected accident costs if the measure is adopted – are efficient.
A different result is obtained where the employer is required to pay fully compensating workers’ compensation benefits.\textsuperscript{8} In that event, the expected reduction in employer accident costs are exactly equal to the reduction total accident costs – i.e., the social costs of accidents – so that employers will make socially optimal decisions.

However, benefits levels that fully compensate workers for the cost of occupational injuries may lead to inefficient behaviors on the part of workers, who take less care on the job and report non-occupational injuries as work-related. There is a substantial literature suggesting that worker moral hazard is a problem. Almost every study examining the issue has found that benefits are positively related to the injury or compensation claims rate.\textsuperscript{9} These results indicate that worker moral hazard dominates any incentive effect that higher benefits have on worker behavior. While the problems of disentangling the two are formidable, Butler and Worrall (1991) have adduced evidence suggesting that this relationship is due to reporting as opposed to risk bearing moral hazard.

On the other hand, there are good reasons to believe that the level of fatal benefits is unlikely to result in moral hazard problems. While it is possible that extravagant fatal benefits could elicit suicidal behavior on the part of workers or homicidal behavior on the part of their dependent survivors, these would appear to be improbable events. It seems unlikely that higher benefit levels will increase fatality reporting. Unlike non-fatal injuries, it is difficult – with the exception

\textsuperscript{8} Less than full compensating benefits are unlikely to result in an efficient level of workplace safety.

\textsuperscript{9} See Thomason and Burton (1993) for a review of this literature.
of occupational disease claims – to portray a nonoccupational fatality as work-related. The empirical evidence indicates that, unlike compensation claims or work injuries more generally, the fatal injury rate is negatively related to benefit levels (see, for example, Moore and Viscusi, 1989 and Ruser, 1993). These results imply that fatal injury rates are unaffected by worker moral hazard.\(^\text{10}\)

For these reasons, we may conclude, that unlike other benefits, worker moral hazard is unlikely to be a problem with respect to fatal compensation. *Taken together with the earlier observation concerning the benefit level required to induce optimal firm behavior, we may conclude that, from the perspective of achieving an optimal level of workplace safety within the context of an experience-rated workers’ compensation program, fatal benefits should be fully compensating.*

**Labour Market Behavior:** Receipt of workers’ compensation benefits has two potential effects on the labour force participation of beneficiaries. First, if benefits are tied to the claimant’s post-injury wage – for example, if compensation is equal to a proportion of the difference between pre and post-injury income -- then the claimant’s wage rate is effectively reduced by the level of compensation benefits. A reduction in the wage rate is tantamount to a reduction in the price of leisure, and economic theory suggests that as the price of a “good” falls, demand for that good increases. As a result, we would expect that the beneficiary would reduce his or her hours of work or stop working altogether. And there is evidence that workers’ compensation benefits

\(^\text{10}\) On the other hand, Butler (1983) reports evidence indicating that fatal injuries were positively related to benefit levels. However, as Hyatt and Thomason (1998) note, however, this study suffers from methodological weaknesses that cast suspicion on this result.
have this effect on the labour force behavior of injured workers. Several studies have found that
the duration of temporary total disability is positively related to the level of workers’ compensa-
tion benefits, a result consistent with this hypothesis (See, for example, Johnson, Baldwin, and
Butler 1995).

In addition, receipt of compensation benefits also increases claimant wealth. As individual
wealth increases, consumers purchase more of what economists refer to as “normal” goods.11 Lei-
sure is generally considered to be a normal good, so that we may expect that compensation bene-
fits – even when they are not contingent upon post-injury wage income – will result in a reduction
of labour force participation by beneficiaries. And, once again, there is evidence consistent with
this hypothesis (Ehrenberg and Smith 1991).

In the context of fatal injury compensation, we could expect that fatal benefits paid to de-
pendent survivors will reduce work incentives and the extent of this reduction will be positively
related to benefit levels. Importantly, this suggests that, while fully compensating benefits will
produce an optimal level of safety, they could incur costs in the form of reduced labour force par-
ticipation. However, given that the fundamental purpose of workers’ compensation is to address
problems related to workplace injuries, it is arguable that these costs should be given less weight
than the more direct costs of work injuries.

**Transaction costs:** The analysis thus far has failed to consider the administrative or trans-
action costs necessarily attendant to a legal process that transfer assets from one person to an-
other -- in this case from the employer to surviving dependents. Transaction costs include the op-

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11 Normal goods would include items such as shelter or clothes. Expenditures on these items gen-
erally increase as individuals become wealthier. There is also substantial evidence that leisure is a
normal good. For example, the long-term reduction in the hours of work is likely due to increas-
ing wealth.
portunity costs of the parties involved in the determination of eligibility and the extent of the benefits. These parties potentially include the claimant, the employer, adjudicators and associated personnel. Obviously, transaction costs are greater when one or more issues are in dispute, so that efficient rules will minimize dispute probability.

Importantly, existing research indicates that dispute probability increases as uncertainty with respect to benefit entitlement increases (Thomason, Hyatt, and Roberts 1998). Other research shows that fairness perceptions are also an important determinant of dispute probability. A process that is perceived to be fair is much less likely to result in a dispute than one perceived to be unfair. Together, these observations suggest that the principles that determine fatal injury compensation should be simple, easily understood, accepted, and incorporate relatively objective and easily understood criteria.

Historically, advocates of workers’ compensation have argued that one of its advantages relative to the tort regime was that compensation programs minimized transaction costs. In part, this was due to the fact that, unlike the tort system, workers’ compensation paid statutorily defined benefits that were largely formulaic. Determination of fully compensating benefits necessarily implies an individual loss assessment. The compensation program would be required to make a separate determination for each claimant. This process, particularly in the case of non-economic losses, is likely to be both expensive and litigious when compared with the current system of limited, statutorily defined benefits. This, as well as the costs associated with reduced labour force participation, could render the workers’ compensation program, considered as a whole, inefficient relative to the one that pays less than fully compensating benefits.
Determining Loss

The analysis presented in the previous section suggests that, under certain conditions, the payment of fatal compensation benefits result in improved levels of workplace safety.\(^\text{12}\) As a corollary, benefits should be related to the extent of the worker’s loss. As previously noted, determination of the extent of loss resulting from a fatal accident is complex, raising questions concerning the value of human life. The approach traditionally used by the legal system, which is described in the next section, involves an accounting exercise, whereby the tribunal responsible for determining the extent of liability is required to identify each separate element of loss, and then assigning a monetary value to each. As will be seen, this exercise uses market measures to evaluate each specific pecuniary loss component, such as the value of lost wage income or the value of lost household services.

While this method is a relatively straightforward, accurate, and reliable method for determining the extent of a claimant’s pecuniary loss, it is much more problematic when it comes to evaluating non-pecuniary damages for which there are no intuitive market measures. In recent years, economists have developed an alternative approach to the determination of fatal benefits that permits the evaluation of the total loss associated with a fatal injury, including both pecuniary and non-pecuniary elements.

**Value of life:** This approach relies on the hypothesis that the operation of a competitive labour market will result in compensating differentials for hazardous jobs. If we assume that these differentials are fully compensating, then it is possible to use estimates of these differentials in combination with risk estimates, to determine the value that the worker attaches to his or her own

\(^{12}\) The conditions are that the worker is unable to accurately judge the risk of workplace injury and that workers’ compensation is experience rated.
life. This approach is based on the proposition that workers choose to work at risky jobs when they are paid a higher wages and that the worker’s value of life is measured by the additional wage that he or she is willing to accept to face the additional risk.

For example, suppose that there are two jobs, one in which the annual risk of fatal injury is 0.001 and another in which the risk is 0.002. The jobs are identical in every other respect. An estimate that the risky job pays $50 per week more than the safer job, implies that the worker in that job is willing to accept this additional risk of 0.001 for $2600 (= $50 x 52 weeks). Extrapolating, we can conclude that if the worker is willing to accept an additional risk of fatality of 0.001 for $2600, then he should accept an additional risk of 0.002 for $5,200 (=2 x, and an additional risk of 0.003 for $7,800, etc. Further extrapolation – to the point where the probability is fatal injury is 1 -- leads to the conclusion that the worker, in this instance, values his life at $2.6 million.

While this approach is appealing, it presents a number of theoretical and methodological difficulties. First, as indicated, it assumes that the worker is able to accurately assess the risk of occupational fatality. As noted previously, evidence suggests that, in general, probability estimates are biased, so that we can expect that workers may underestimate risk differences among jobs. As a result, a value-of-life calculation based on the risk premium will underestimate the true value that the worker places on his or her life.

Estimation of the risk premium is also problematic. It involves using survey data sets that have a large number of observations on worker’s wages and other job characteristics. A multiple regression equation predicting wages is then estimated controlling for variables representing various demographic and job characteristics as well as a measure of job risk. The coefficient on the job risk variable provides the estimate of the risk premium.
Value-of-life estimates using this methodology are necessarily average estimates. To the extent that individuals differ in their valuation, these estimates are unlikely to be accurate for the individual worker. Of course, this limits the usefulness of the procedure as a tool for determining the appropriate level of fatal benefits for individual claims.

In addition, these estimates are critically dependent on the assumption that the investigator adequately controls for other differences in job and person characteristics correlated with wages and the risk of injury. If he or she fails to do so, then estimates may be biased. For example, the degree of physical effort required by the job is likely to be highly correlated with the risk of fatal injury. This variable is also likely to be a working condition that affects wages -- other things equal, workers will demand higher wages for jobs that require greater physical effort. If the extent of physical effort required by the job is unobserved by the investigator, then the fatal risk measure will capture some of the variation in wages that compensates the worker for additional physical effort. As a result, the risk premium variable is likely to be biased upward; that is the investigator will over estimate the worker’s value-of-life. In this connection, it is important to note that most available data sets lack good measures of working conditions.\(^{14}\)

Unobserved personal characteristics are also likely to affect the risk-wage trade-off. For example, since safety is a normal good,\(^ {15}\) we should expect that the risk-wage trade-off will be

\(^{13}\) See Viscusi (1993) for a review of this literature.

\(^{14}\) The risk of non-fatal injury is highly correlated with the fatal risk measure and, at least theoretically, can be expected to influence wages. Many “value-of-life” studies have included a measure of the risk of non-fatal injury as a regressor in the wage equation. However, this variable is problematic for two reasons. Typically, the occupation or industry non-fatal injury rate is used as a proxy for non-fatal risk. Unfortunately, due to risk-bearing and reporting moral hazard, we may expect that this variable measures risk with substantial error. In addition, this variable is highly correlated with the fatal risk measure, resulting in substantial multi-collinearity problems.

\(^{15}\) A normal good is one where consumption is positively related to income. In other words, as income rises, consumers will increase their consumption of a normal good.
greater for wealthier individuals. We may also expect that the wage-risk trade-off is dependent on the quantity and quality of the remainder of the worker’s life, so that older workers or workers who are ill or infirm, may require a lower risk premium than younger or healthy ones. While most data sets include an age variable, health status in generally unobserved.

Many of these variables, including the fatal risk variable and wages, are potentially measured with error, which could also affect estimates of the wage-risk trade-off. Typically, only gross wage measures are available, although after-tax wages are the appropriate metric for value-of-life calculations. This is particularly important when workers’ compensation benefits are included as a control variable in the regression equation. Since compensation benefits are non-taxable income, the dependent wage variable should be expressed in comparable after-tax terms.¹⁶

Risk measures are problematic since they are necessarily aggregate measures, representing either the risk of fatal injury for the worker’s occupation or industry. Typically, these measures are based on two-digit SIC or SOC categories, which are quite broad and include jobs that are very different from one another with respect to risk. As such, we can expect that actual fatality risk for particular jobs is measured with error and that estimates of the fatal risk premium will be downwardly biased.

This examination of the “value-of-life” methodology indicates that estimates based on the methodology should be interpreted cautiously. Nonetheless, there is a substantial literature that can provide benchmarks by which to evaluate fatal injury compensation. Viscusi (1993) reviewed 24 studies from which estimates of the value-of-life were or could be derived. These esti-

¹⁶ As indicated, the risk premium should be reduced by workers’ compensation benefits, since these benefits reduce the worker’s expected costs of accidents. Omission of this variable from the regression equation will bias the risk coefficient downward, leading the investigator to underestimate the risk premium.
mates, which were taken from studies using a variety of data sets – although primarily US data -- and methodologies, ranged from a low of $600 thousand (Kneisner and Leeth 1991) to a high of $16.2 million (Moore and Viscusi 1990). Most are in the $3 million to $7 million range and the median estimate would appear to be about $4.9 million. Viscusi (1993) puts greatest faith in his own estimate of $4.1 million (Viscusi, 1978) and that of Moore and Viscusi (1988), who estimated a value-of-life of $7.3 million for workers with an average income of $19,444.

The Law of Fatal Injury Compensation

Thus far, the discussion has been limited to a theoretical analysis of fatal injury compensation, and its implications for social welfare. In this section, I turn my attention to actual practice, both within and outside the context of workers’ compensation, beginning with a brief history of fatal injury compensation. This is followed by discussion of damages paid in negligence actions involving non-work related fatalities. Finally, this report examines fatal benefits provided by North American workers’ compensation programs.

A Brief History of Compensation for Fatal Workplace Injuries

Prior to the enactment of workers’ compensation statutes, the law failed to distinguish between work and non-work injuries. For both, at common law there was no right of action where the injured party died, leading to the odd result that it was cheaper for a tortfeasor to kill than merely cripple his or her victim. This changed in 1846 with the enactment of Lord Campbell’s Act, an English statute that provided certain survivors with a cause of action in the event of

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17 The average annual income (in 1990 $) in the Kneisner and Leeth study was $26,226, while it was $19,194 in the Moore and Viscusi study.

18 Average income in the Moore in the Viscusi studies was $24,834 (in 1990 $).
a death caused by negligence or some wrongful act by another. The principles embodied in this Act now form the basis for similar legislation, typically entitled Fatal Accidents Act, in all common-law provinces.  

Workers’ Compensation Acts extinguished the dependent survivors’ right of action under Fatal Accidents Acts, as it did for tort actions for personal injuries more generally. This development was the product of what has been described as an “historic compromise”. The essence of this compromise was that Canadian workers gave up the right of action in tort against negligent employers in which compensation was potentially substantial but uncertain for a guarantee of more limited compensation. In the context of non-fatal accidents, a tort suit could result in full compensation for economic loss, including the loss of earnings as well as reimbursement for medical, rehabilitation, and housekeeping expenses; non-pecuniary damages, such as those for pain and suffering; and potentially, non-compensatory, punitive and exemplary damages. On the other hand, under workers’ compensation, the injured worker is only entitled to a portion of his or her loss of earnings and no non-pecuniary compensation or non-compensatory damages.

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19 Other statutory law, typically entitled Survival of Actions Acts, permits an independent cause of action by the decedent’s estate. The right to sue is the decedent’s; entitlement to damages, with some limitations, is identical to that which the decedent would have enjoyed but for his or her death. In many provinces, damages are limited to the pecuniary loss suffered by the estate, including the cost of medical services. There is variation as to whether the estate may claim damages for the loss of future earnings. Other provinces allow the estate to collect damages for non-pecuniary loss, or even non-compensatory damages.

20 In recent years, compensation programs in several provinces have begun to award permanently disabled claimants a lump sum amount that is independent of the award for earnings loss. For example, since 1985 Ontario has paid two awards for permanent disability: an award based on the claimant’s actual (or deemed) wage loss, called a FEL (future economic loss) award and an award based on the extent of the claimant’s functional impairment, called a NEL (non-economic loss) award. As the name implies, the NEL, and like awards in other provinces, represent compensation for non-pecuniary loss.
As indicated, a survivor’s right to compensation prior to the enactment of workers’ compensation legislation has a different statutory origin and are, consequently somewhat different from the common law rights of injured workers. As a result, the nature of the compromise is somewhat different. To explore this issue further, it is necessary to examine the law with respect to the compensation of non-work related fatalities.

**Dependent compensation for non-work injuries:**

The law embodied in provincial Fatal Accident Acts established the right to compensation for a certain class of survivors in the event of a wrongful death. These survivors are typically limited to the widow and minor children of the deceased, but in some provinces the right of action has been extended to certain other persons, including step-children, grandparents, grand-children, and siblings. Damages are typically limited to economic or pecuniary loss, although some provinces have broadened the definition of pecuniary loss to include items such as a loss of guidance, care, and companionship, which can include compensation for grief.
Calculations of pecuniary loss are guided by the principle of *restitutio in integrum*. That is, the purpose of compensation is to restore the survivor to the position that he or she would have occupied had the injury not occurred. Damages are awarded in a lump sum and include both special damages for specific losses, such as the cost of the decedent’s funeral, as well as general damages. General damages are calculated by determining the (1) level of benefits the claimant would have received if it were not for the claimant’s death and (2) the period during which he or she would have received those benefits.²¹

Benefit levels are based on two factors: lost income and the value of lost household services.²² Income loss is equal to that proportion of the decedent’s net income (gross income after deductions for taxes, etc.) that would have been available to the survivor if the decedent had lived. While calculation of net income is relatively straightforward, determination of the survivor’s share – also known as the dependency rate -- is not. This rate is based on actuarial evidence and varies depending on the decedent’s circumstances. For example, it is typically assumed that a working adult male who is the sole support for his family would have spent 70 percent of his income on his spouse and an additional four percent for each child. This rate is often reduced for

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²¹ Since awards are paid in a lump sum, it is necessary to commute the stream of lost wages into a present value, which requires estimating a discount rate. In many provinces, the discount rate is established by statute.

²² This ignores claims for loss of accumulated wealth, i.e., claims that were it not for the decedent’s premature death, he or she would have accumulated a more substantial estate that would eventually devolved to the dependent survivor. These claims are frequently countered by the argument that survivors received their portion of the estate earlier than otherwise due to the untimely death. As a result, they received a benefit from the “acceleration of inheritance”. These claims are often offsetting so that there is no net benefit to the survivor.
two earner families. Household services are determined by estimating the amount of time that the
decedent would spend performing these services and multiplying this amount by the going market
rate for each service.

In calculating the period of the loss, courts attempt to determine the length of time that the
dependent survivor could have reasonably expected to enjoy these benefits. Calculation of this
period is based on actuarial tables, although the parties may adduce evidence showing that the
survivor departs from the norm. For the surviving spouse the period is generally deemed to be
equal to the joint life expectancy of the decedent and spouse, while for the child, it is typically the
period between death and the age of majority. Courts also take into account contingencies that
can affect the period of loss. These contingencies include events that would have ended the period
of dependency had the decedent lived, such as the probability of divorce, or events that affect the
claimant’s dependency after the fact, such as the probability that the spouse will remarry or the
probability that surrogates will care for the decedent’s dependent children.

There are a number of similarities with and differences between the compensation of fatal
workplace injuries through workers’ compensation and compensation of fatal non-work injuries
under Fatal Accidents legislation. Both types of legislation provide compensation to specific
classes of beneficiaries, and benefits are, for the most part, based on pecuniary loss. However, as
will be seen, workers’ compensation programs typically compensate survivors for only a portion
of their pecuniary loss. In addition, similar to nonfatal injuries, there is no requirement that the
compensation claimant demonstrate employer fault, merely that the accident arose out of and in
the course of employment.23

23 In fact, many jurisdictions do not even require a showing that the injury “arose out of” em-
ployment if the death occurred on the employer’s premises (or in the course of employment).
Compensation of fatal work injuries

Two basic issues are presented by an analysis of fatal benefits provided by workers’ compensation programs: eligibility and level of benefits. This section will discuss each in turn.

**Eligibility:** In general, eligibility for workers’ compensation survivor benefits is conditioned on two criteria: a relationship to the decedent worker that meets statutory requirements and dependency on the decedent worker.

*Statutory Relationship:* In most jurisdictions the statute defines certain classes of relationship – typically the spouse and minor children, but often others as well – that are eligible for benefits.24 Claimants must first satisfy the compensation agency or court that they fall into one of those classes. Typically, these classes are defined by specific relationships, although sometime the statute will include a general class, such as “member of the family”, either in addition or instead of more specific ones.

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24 Typically, invalid children or children who are mentally or physically incapacitated from earning wages, who have reached the age of majority, are also eligible for benefits. In addition, most North American jurisdictions extend eligibility to adult children who are currently enrolled in an accredited educational institution for a few years beyond the age of majority. In British Columbia, “a child under the age of 21 years who is regularly attending an academic, technical or vocational place of education” is eligible for compensation benefits (Section 17(1) (c) of the Workers’ Compensation Act).
Most Canadian provinces, including British Columbia, indicate that the “wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister, and a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis” as members of the worker’s family and thereby “dependents” for the purpose of fatal injury compensation. Some US states have a more extensive list, including in-laws, aunts, uncles, nieces, or nephews. Others limit compensation to the surviving spouse, children, and parents, while in still others dependency is the sole criterion for benefit eligibility.

Where the statute defines specific classes and does not mention a more general one, determination of whether the claimant is a eligible by virtue of his or her relationship to the decedent is not a difficult task. In general, the courts and workers’ compensation agencies responsible for administering the law have applied common-law definition and ordinary domestic law. However, with respect to US law, Larson (19xx) notes that:

…because of the beneficent character of the legislation, established definitions and rules will usually be stretched as far as precedents will allow to take care of meritorious cases of dependency.

Problems sometimes arise where the claimant’s relationship is through common-law marriage or where the marriage is otherwise deemed to be invalid, e.g., because the decedent had failed to obtain a divorce from a previous marriage. Common-law relationships are also problematic. Compensation is payable in US states where common-law relationships are legally recognized. Most Canadian jurisdictions provide benefits to a common-law spouse, although they
frequently require a minimum period of co-habitation. In some jurisdictions, benefits are not payable to a common-law spouse where the worker also left a spouse who was living apart from the decedent worker. However, in British Columbia (as well as Saskatchewan and Nova Scotia) benefits are apportioned between the spouse and common-law spouse where the spouse is only partially dependent on the decedent worker.

Problems have also arisen with respect to the status of posthumous or illegitimate children. At one time, courts routinely held that an illegitimate child was not a “child” for the purpose of workers’ compensation legislation, under the common-law doctrine of *filius nullius*, i.e., that the illegitimate child is “nobody’s child”. However, Ison (1988) notes that the tendency in Canada has been to extend the right to compensation to illegitimate children, and since 1973, differential treatment of illegitimate and legitimate treatment has been considered a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

*Dependency:* In British Columbia as well as many US jurisdictions, there is a conclusive statutory presumption that the surviving spouse and children were dependent on the deceased worker if they were living with the decedent at the time of his or her death. In some, there is no requirement of living together. Questions of dependency arise, however, where there is no such presumption or where the claimant is someone other than the mother or child.

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25 In British Columbia, the minimum period is three years.

26 In several states, a legal obligation to provide support is sufficient for demonstrating dependency. In others, dependency is presumed unless the spouse had voluntarily abandoned the decedent worker without justifiable cause. No other Canadian province makes a statutory presumption of dependency.
Dependency does not generally require a showing that the decedent provided the claimant with the necessities of life or that the claimant would have been destitute without the decedent’s support. All that is required is that the claimant relied on the decedent’s support to maintain an accustomed standard of living. While there is typically no need for the claimant to show that the decedent had a legal obligation to support the claimant, in some jurisdictions the mere existence of a legal obligation is insufficient to substantiate a claim of dependency.

Often statutes distinguish between total and partial dependency, paying less generous compensation to persons in the latter category. Partial dependency is found where claimant has other sources of support. However, if that support in insubstantial or sporadic, the claimant may be considered to be totally rather than partially dependent.

**Benefits:** While there is substantial variation among jurisdictions with respect to benefits paid to compensation claimants, there are some common features found in most jurisdictions. First, benefits are typically limited to two items: (1) payment of funeral and other expenses related to the disposal of the decedent worker’s remains and (2) replacement of the lost-earnings of the decedent worker. Second, earnings replacement benefits typically vary depending on the nature of the claimant’s relationship to the decedent spouse. Greatest benefits are paid to the surviving spouse. Other claimants are typically entitled to less generous benefits.
This section will discuss benefits paid to these different claimant categories separately. Since the surviving spouse and his or her dependent children are the sole or primary beneficiaries in the overwhelming majority of fatal injury claims, this section will provide a detailed review of spousal benefits.\(^{27}\) A briefer discussion of benefits paid to other claimant categories follows.

Workers’ compensation legislation customarily prioritizes beneficiaries where there is more than one category of claimants dependent on the survivor. Typically, only one category is entitled to benefits at any one time, although should that category lose its entitlement – for example, through death or remarriage – the category that is next in line would then become eligible. Claimants deemed to be totally dependent have priority over partial dependents, and a spouse and children typically have priority over dependent parents who, in turn, normally have priority over other dependents. Total benefits are usually limited, so that where more than one beneficiary is eligible for benefits at any one time, this total amount will be shared. If both claimants were totally dependent, then the rule is typically “share and share alike”. Where there are multiple partial dependents, they will share according to the extent of their dependency.\(^{28}\)

**Spousal benefits:** Tables 1 and 2 report the statutory parameters of benefits paid to the surviving spouse and children by workers’ compensation programs in North America.\(^{29}\) Table 1 presents information on the statutory parameters that define the periodic benefit payment, while

\(^{27}\) National fatal injury data from the United States indicate that for over 78 percent of all such claims, the primary beneficiary was a spouse. Since in over 14 percent of these claims, there was no eligible dependent, only slightly more than seven percent of all fatal injuries led to claims where the primary beneficiary was someone other than the spouse.

\(^{28}\) Where the beneficiaries are a spouse and children, compensation is most often paid to the spouse and the children do not have a separate entitlement.

\(^{29}\) In most US states, benefits are paid weekly, while in all Canadian provinces survivor benefits are paid monthly. In this Table, I have converted monthly amounts to their weekly counterparts to facilitate comparison between jurisdictions.
Table 2 displays statutory parameters that limit benefit duration as well as other aspects of fatal injury compensation. In all cases, the Tables report data in effect as of January 1, 1997. Together these Tables show that there is substantial variability in fatal compensation benefits paid to the decedent’s spouse and children.

[See: Table 1, Page 42 and Table 2, Page 46]

The first five columns of Table 1 show the replacement rate or the proportion of the decedent worker’s wages that is replaced by compensation benefits, while the sixth and seventh report the minimum and maximum weekly amounts paid as benefits. In all but three US states – Idaho, Oregon, and Wyoming -- and the two Canadian territories, benefits are equal to a proportion of the workers’ pre-injury wage. In those four jurisdictions, benefits are equal to a flat amount that is increased as the number of dependent children increases. As can be seen, the replacement rate varies with the number of dependents in 17 US states and three Canadian provinces. Additionally, in five states and five provinces, an additional flat amount is paid per child, while in six states (Alaska, Arizona, Hawaii, Idaho, Utah, and Washington) the minimum and in another five (Arizona, the District of Columbia, Hawaii, Idaho, and Kentucky) the maximum varies with the number of dependent children. All together, in over one-half of US and in all Canadian jurisdictions, compensation benefits are related to the number of dependent children.

In three Canadian provinces, benefits are dependent on the employment situation of the surviving spouse. In Alberta, a spouse with no dependent children (or whose eldest child is over 18 year old) who is employed or who refuses to seek gainful employment will receive a five-year pension that is reduced by 20 percent per year. If the spouse is capable of employment, then she
will receive up to five years of benefits while actively engaged in a vocational rehabilitation pro-
gram; upon completion of this program, the spouse will receive the five year reducing pension de-
scribed earlier. However, if incapable of employment, there is no limitation on benefits. Similarly,
Manitoba will pay a monthly pension equal to 90 percent of the decedent worker’s wages in lieu
of the lump sum award for invalid spouses or spouses aged 49 or older.

The statutory formula for fatal benefits in British Columbia is unique. While it is common
to pay benefits that increase with the number of dependents, and while several provinces pay a
lump sum that varies with the claimant’s age, Ontario is the only other jurisdiction to use both
factors used to determine spousal benefits. The following matrix describes these benefits.

[See Table 3, Pages 50]

Several jurisdictions pay the surviving spouse a lump sum in addition to periodic benefits.
This lump sum payment, which is reported in the first column of Table 2, varies by the number of
children (Oklahoma) or by the age of the spouse (Manitoba, Ontario, and Quebec).

In most North American jurisdictions, benefits for the surviving spouse are paid for the pe-
riod of dependency, which is typically defined to be until death or remarriage. Compensation pro-
vided for the benefit of non-invalid children are typically limited to the age of majority, although
this period may be extended for children enrolled in an educational institution. Some states and
most Canadian jurisdictions further limit the duration of periodic payment to the surviving spouse
by establishing a maximum period during which the spouse may collect benefits, a maximum
amount of benefits that may be received, or a maximum age at which benefits may be paid. The

30 These amounts, as well as the added benefit paid for dependent minor children, are expressed in
the currency of the country in which the jurisdiction is located. For example, Alabama minimums
and maximums are in US dollars, while Alberta minimums and maximums are in Canadian dollars.
second, third, and fourth columns of Table 2 report these limitations, while the right-hand most columns of that Table report the limits on benefits to children.

Proportionately Canadian programs are more likely to limit the duration of pension benefits paid to the surviving spouse – although US programs are more likely to terminate benefits upon remarriage, as indicated by the data in the fifth column of the table. On the other hand, Canadian programs, particularly those that limit the duration of pension benefits, are much more likely to pay a generous lump sum payment in addition to a pension.

In most Canadian provinces, spousal benefits remain unaffected by the claimant’s remarriage. However, in all US states and in three Canadian jurisdictions (Ontario, New Brunswick, and the Northwest Territories) benefits terminate upon remarriage if there are no dependent children. In most US states where periodic benefits terminate on remarriage and in all such Canadian jurisdictions, the spouse receives a lump sum payment. As can be seen, the typical US payment is the equivalent of 104 weeks of benefits at the periodic rate, while it is the equivalent of 52 weeks for all Canadian programs. In most US programs and all Canadian ones, benefits may continue after the spouse has remarried. In a few of these programs, full spousal benefits continue until the youngest child has reached the age of majority.

Two factors not depicted in Tables 1 and 2, also impact compensation benefits. First, in eleven US states and five Canadian provinces, benefits are reduced by payments made to surviving claimants by the Social Security, C.P.P., or Q.P.P. programs. The precise formula used to determine the amount of the offset varies substantially across jurisdictions. For example, in some states the offset is equal to fifty percent of the Social Security benefit, while in others, the combined benefit is equal to 80 percent of the decedent worker’s wage. Second, nine Canadian jurisdictions and eight US states adjust compensation benefits annually, based on changes in the cost
of living as measured by the C.P.I or the average wage in the jurisdiction. Some jurisdictions put a cap on the amount of the adjustment or otherwise reduce it. While the first factor results in a relatively small reduction in the value of the award, the second can substantially increase the commuted value of compensation benefits.

As can be seen, the complexity of factors determining fatal injury compensation prevents an easy comparison of the relative generosity of benefits across jurisdictions. To enable such a comparison, two measures of benefit generosity are computed for all North American jurisdictions and reported in Table 4. The first of these are the expected benefits that will be paid to the spouse of a worker who has suffered a fatal injury as the result of an occupational accident. These benefits are calculated using a uniform distribution of beneficiaries, which vary by age and number of dependent children. Calculations were also based on a standard wage distribution and the jurisdiction’s average weekly wage in 1996.31

[See Tables 4, Page 51]

The second measure reported in Table 4 is an index is the ratio of expected benefits – as described in the previous paragraph – to a standard. This standard is equal to the benefits that would have been paid if the jurisdiction had adopted the statutory parameters prescribed by the Model Act promulgated by the Council of State Governments in the mid-1970s. The advantage

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31 The wage distribution and the distribution of dependent beneficiaries were both obtained from the National Council of Compensation Insurers.
of this second measure is that it accounts for differences in averages wages across jurisdictions and, therefore, differences in national currency.\textsuperscript{32}

Overall, the data indicate that fatal benefits for spouses in British Columbia are generous relative to those paid in other North American jurisdictions. In large part, this is due to the automatic escalation of pension benefits, which is virtually nonexistent in US states. In addition, unlike many other Canadian jurisdictions, there is no limit on the duration of fatal benefits in British Columbia – another factor accounting for the relative generosity of fatal compensation in BC. On the other hand, it should be noted that fatal spousal benefits paid by all North American workers’ compensation programs fall far short of the expected “value-of-life” estimates made by Viscusi and others.

\textit{Benefits to other persons:} Where there is no spouse, the primary beneficiaries are the decedent worker’s dependent children. The benefit entitlement of orphan children in most jurisdictions is similar, if not identical, to spousal benefits. Those jurisdictions that vary the overall level of benefits paid to a spouse according to the number of dependent children, do the same when only orphan children are entitled to compensation, although the amounts may vary. For example, in British Columbia, a single orphan child is entitled to 40 percent of the amount paid to a dependent spouse with two or more children, while two orphan children are entitled to 50 percent

\textsuperscript{32} Importantly, the Model Act prescribes maximum and minimum benefits as a percentage of the state’s average weekly wage, i.e., the maximum is equal to 200 percent of the average wage, while the minimum is set at 50 percent. While the Model prescribes that the maximum and minimum are based on the average wage from two years previous, for simplicity, the calculations use 1996 wages to compute 1997 benefits.
of that amount, and three orphans receive 60 percent. An additional $209.40 is paid monthly for each child above three in number. Similar to the case where the worker is survived by a dependent spouse

Compensation for other claimants is based on the extent of the claimants’ dependency. In some jurisdictions, the periodic amount due to a total dependent is identical to that which would be paid to a dependent spouse. In most it is a lesser amount, reflecting a more remote relationship with the decedent workers. For example, in Arizona a single dependent parent receives 25 percent of the claimant’s pre-injury wage, two dependent parents receive 40 percent, one sibling receives 25 percent, while two or more receive 35 percent share and share alike. In British Columbia, a total dependent claimant other than a spouse or child receives a flat rate amount of $424.89 per month.

In most North American jurisdictions, partial dependents receive awards that are proportional to those paid to a total dependent based on the average contribution of the decedent worker to the claimant dependent. In some jurisdictions this proportion is equal to the ratio of this average contribution to the decedent worker’s total income, while in others it is equal to the ratio of this average contribution to the dependent claimant’s total income. In some US states the amount for partial dependents is a fixed proportion of the worker’s pre-injury and therefore does not vary the degree of dependency. In some, the amount paid to partial dependents is at the discretion of the agency that administers the compensation program.

For the most part, the duration limitations that apply to dependent children where there is a surviving spouse are identical to the limitations applicable to orphans. In some US states these same limitations apply to siblings and grandchildren. Many states have a fixed statutory limitation on the number of weeks during which benefits may be paid or on the total amount of benefits paid.
to these other dependent classes. In addition to or instead of these limitations, the statute may prescribe that the claimant is only entitled to compensation for “as long as he can have reasonably expected” to receive support from the decedent worker.

*No dependents:* Most US states – but no Canadian provinces or territories – provide for the payment of some amount, in addition to funeral expenses, in the event that the claimant dies without eligible dependents. These monies are most often paid to the state’s second injury fund or to some other fund maintained by the state for some purpose related to the functioning of the workers’ compensation program. However, in some states an award is made, either to the claimant’s estate, the claimant’s parents, or the claimant’s next-of-kin. These awards are reported in Table 5. As can be seen, the award paid in non-dependency cases varies substantially from state to state, although in most it is a token amount. In most instances, the awards are made to a state workers’ compensation fund, such as a Second Injury Fund, designed to finance special problems encountered by the compensation program.

*[See Table 5, Page 53]*
Recommendations

The examination of the law of fatal accident compensation suggest that there are two general sets of issues that need to be addressed by workers’ compensation programs. The first set comprises issues relative to eligibility for compensation: How should we determine who is eligible for fatal benefits and who is not? Under what circumstances should the workers’ compensation program pay fatal compensation benefits? The second set involves issues relating to benefit levels: How much compensation is appropriate for a fatal accident claim? Should benefit levels vary among surviving claimants or should the same level be paid in every claim? What is (are) the appropriate basis (bases) for compensation benefits?

Eligibility

As indicated, in most North American jurisdictions, receipt of compensation benefits is conditioned on two criteria: a family relationship and dependency, although the latter requirement is often waived in the case of a spouse or child. Importantly, where no person qualifies meets these eligibility criteria, in many jurisdictions no compensation is paid.

The economic analysis presented earlier suggests that the payment of fatal compensation benefits in the context of an experience-rated workers’ compensation system results in a more efficient level of workplace safety. By increasing workers’ compensation costs, higher benefits induce experience-rated employers to invest in safety. A logical inference is that compensation should be paid in every fatal injury claim, even those where there are no dependents. Equity considerations would seem to demand an identical result – employer compensation costs should be related to the number of fatal injuries experienced by the employer, not simply those in which
there was an eligible dependent. This would seem to be an important consideration when one recalls that fatal injury claims are rare, but costly, and that U.S. data indicate that for a substantial proportion of claims, there are no eligible dependents.

If benefits are paid in every fatal injury claim, how do we determine who is eligible and who is not? This question is largely beyond the scope of economic analysis, involving questions regarding the nature of family obligations. However, to a certain extent, current law in many jurisdictions, which prescribes a list of eligible dependents, reflects a somewhat anachronistic paternalism compared with privately provided life insurance where the worker is permitted to choose his or her beneficiary. Since workers’ compensation confers no-fault liability on employers, the insurance analogy would seem to be particularly appropriate.

In addition, economic analysis suggests that policymakers, particularly in the context of a no-fault program, should minimize transaction or administrative costs associated with the determination of eligibility. In particular, this would suggest a policy that minimizes dispute probability. Coupled with the previous observation that benefits should be paid in every fatal claim, the following solution is recommended: British Columbia should adopt a conclusive presumption of dependency for the decedent’s spouse and/or minor children. If there is no spouse and/or minor children, the decedent worker should be allowed the opportunity to name his own beneficiary(ies). This could be done upon initial employment using a form supplied by the Workers’ Compensation Board, with a provision for allowing the worker to change beneficiaries at any subsequent point. Where there is no named beneficiary, benefits would be paid to a family mem-

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33 These categories should be defined broadly in accordance with recent trends. Dependent children would include illegitimate as well as legitimate children, adopted as well as natural, stepchildren, and posthumous children. The definition of “spouse” should include common-law spouses as well as divorced or separated spouses for whom there is a legal obligation of support.
ber who could demonstrate dependency. If there no person could demonstrate dependency, benefits would be paid to the next of kin. In the case of a decedent worker with no living relatives and no named beneficiary, the employer would be charged

Permitting workers to select their own beneficiaries, where there is no spouse or children, should have the happy two-fold result of eliminating some of the paternalism inherent in the present system and avoiding at least some disputes that would otherwise occur. In addition, by allowing the worker some choice of beneficiaries, the program would confer a benefit upon the fatally injured worker that he or she does not currently enjoy. The exception accorded the spouse and child recognizes a widely accepted social norm regarding family obligations as well as the fact that the decedent’s death is likely to have the greatest economic impact on a spouse and minor children. To the extent that other persons, such as parents or siblings are dependent on the injured worker, we could reasonably expect that those individuals, who the worker cared for while alive, would be named as beneficiaries in the event of his or her death. Importantly, the payment of benefits to named beneficiaries should resolve many of the questions that currently could arise with respect to the determination of dependency and thereby substantially reduce transaction costs. In this context, it is important to recall that many features of workers’ compensation was designed to reduce litigiousness.

In the absence of a named beneficiary, the Board could entertain dependency claims by persons other than the spouse or children. In the absence of a named beneficiary and other dependents, the Board should pay benefits to the decedent’s estate. This alternative is to be pre-

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34 In addition, priority to the spouse in children will be in accordance with decedent’s wishes in the overwhelming majority of cases.
ferred to one that calls for no contribution or a contribution to be made to, for example, the Enhancement Reserve fund, since such a contribution would reduce compensation costs.

**Benefit levels**

The economic analysis presented earlier suggests that benefits should be related to the workers’ loss and that compensation equivalent to the worker’s loss is likely to result in optimal accident prevention. Estimates produced by Viscusi and others suggest that this requires fatal awards in the range of four or five million dollars. However, it is important to recall that workers’ compensation was a quid pro quo arrangement whereby workers agreed to accept limited benefits in exchange for no-fault employer liability. Payment of full compensation benefits would be tantamount to reneging on this social contract, an act with adverse political and – perhaps -- economic consequences. For these reasons, it would be prudent to maintain the current limited compensation scheme, which would require that benefits be something less than the compensation awarded to the victims of non-work related accidents. In the context of the Fatal Accident legislation that applies to non-work related fatalities, this would imply a system of benefits intended to compensate survivors for a portion of lost wage-income with no additional compensation for non-pecuniary loss.

As previously noted, the rules determining compensation benefits vary substantially across jurisdictions. There are two general conclusions that can be drawn from an examination of these rules. First, in many jurisdictions – including British Columbia -- the rules are complex, and – perhaps -- difficult for surviving dependents to understand. Why should a 40 year old surviving spouse without children receive a pension that has a present value that is nearly seven times greater than the lump sum paid to a 39 year old spouse without children? Disregarding the very
real equity problems raised by these rules, the fact that it is difficult to discern an underlying rationale could create the perception of unfairness, which will increase dispute probability.

Second, many of these rules -- for example, replacement ratios that vary with the number of dependent children or the termination of spousal benefits upon remarriage -- appear to base compensation on the survivor’s needs rather than the worker’s loss. To the extent that this is the case, the rule is contrary to the principle that the survivor should be compensated for lost wage income. As indicated, a jurisdiction is more likely to achieve optimal workplace safety where benefits are related to the loss suffered by the injured worker.

This suggests that the principle determining fatal injury compensation should be simple and easily understood. The analysis also suggests that compensation be based on the decedent worker’s loss and not the survivor’s needs. Taken together, these observations would suggest that dependent compensation should not vary by type of beneficiary or even by the extent of dependency. Rather, the following policy is recommended: Based on the notion that the fatally injured worker’s loss is at least as great as that experienced by the totally disabled worker, fatal injury compensation should be equivalent to that paid to a permanently and totally worker. Since the loss is a permanent one, benefits should be paid for period for which the decedent worker would have been paid wages, i.e., until age 65.
References


Table 1 — Weekly Fatal Benefit Parameters

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Replacement Rates for Surviving Spouse</th>
<th>Maximum and Minimum for Spouse Alone</th>
<th>Added Amount for Child</th>
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<tbody>
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<td></td>
<td>Spouse Only</td>
<td>One Child</td>
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<tr>
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</table>

| United States     |                      |                      |                      |                      |                      |                      |                      |
|                   | Spouse Only | One Child | Two Children | Three Children | Four Children | Five or More Children | Weekly Minimum Benefit | Weekly Maximum Benefit |
| Alabama           | 0.5 | 0.667 | 0.667 | 0.667 | 0.667 | 0.667 | 125<sup>10</sup> | 456 | NA |
| Alaska            | 0.8<sup>5</sup> | 0.8<sup>5</sup> | 0.8<sup>5</sup> | 0.8<sup>5</sup> | 0.8<sup>5</sup> | 0.8<sup>5</sup> | 75<sup>5,11</sup> | 700 | NA |
| Arizona           | 0.35 | 0.5 | 0.65 | 0.667 | 0.667 | 0.667 | 0 | 484.62<sup>12</sup> | NA |
| Arkansas          | 0.35 | 0.5 | 0.65 | 0.667 | 0.667 | 0.667 | 20 | 348 | NA |
| California        | 0.667 | 0.667 | 0.667 | 0.667 | 0.667 | 0.667 | 120.88 | 483.52 | NA |
| Colorado          | 0.667 | 0.667 | 0.667 | 0.667 | 0.667 | 0.667 | 120.88 | 483.52 | NA |
| Connecticut       | 0.75<sup>5</sup> | 0.75<sup>5</sup> | 0.75<sup>5</sup> | 0.75<sup>5</sup> | 0.75<sup>5</sup> | 0.75<sup>5</sup> | 20 | 678 | NA |
Table 1 (Continued)

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<th>Added Amount for Child</th>
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</table>
Replacement rates as a proportion of gross pre-injury wages unless otherwise stated. “NA” indicates that claimants are paid a flat rate.

Maximum and minimum benefits are expressed in each country’s currency.

Additional weekly amount per child. Unless otherwise specified, this amount is paid for each child. “NA” indicates that the jurisdiction does not pay an allowance for children.

Unless otherwise stated, the weekly minimum is absolute.

Spendable earnings.

See Table 3 for details.

Less payments to other dependents (to a limit of $1090).

Compensation is reduced by surviving spouse’s earnings.

Replacement rate for spouse aged 40 years. Subtract 0.01 for each year under 40 – to a minimum of 0.20 – and add 0.01 for each year above 40 – to a maximum of 0.60.

Actual wages are paid if below the minimum.

Varies by number of dependent children.

Maximum wage. Maximum benefits are equal to $484.62 multiplied by the replacement rate.

Varies by dependent. Actual wages paid if less than the minimum, except benefit can not be less than $38 per week.
# Table 2

Statutory Parameters: Lump Sum Payments and Limitations on Benefit Duration

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Lump Sum</th>
<th>Limits on the Duration of Spousal Benefits&lt;sup&gt;1&lt;/sup&gt;</th>
<th>Remarriage Payment&lt;sup&gt;2&lt;/sup&gt;</th>
<th>Limits on the Duration of Benefits to Children&lt;sup&gt;3&lt;/sup&gt;</th>
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</table>
Limits apply to spousal benefits only.

2 NA signifies that benefits do not terminate upon remarriage. “No” signifies that there is no remarriage payment.

3 Limits apply to nondisabled children only.

4 Spouses without children: Working spouses or spouses who refuse to seek employment are paid a pension which is reduced by 20 percent of the initial benefit each year. Spouses who are unemployed but capable of working are entitled to up to five years of benefits while enrolled in a vocational rehabilitation program; upon termination of rehabilitation, a reducing pension is paid which terminates after five years. Spouses with children receive benefits until the youngest child reaches age 18. At that time the spouse is eligible for benefits identical to those paid to spouses without children. There is no limit on benefit payments to a spouse incapable of working.

5 See Table 3 for further details.

6 Spouse aged less than 40 years without children is entitled to an additional lump sum payment in lieu of a pension.

7 Minimum lump sum payment. Spouse aged 45 receives a lump sum equal to $49,530. This amount is reduced by 2 percent for each year older or younger than age 45.

8 Applies to spouses without children. For spouses with children, time limit begins to toll once the youngest child reaches age 18 or the spouse reaches age 71, whichever comes first.

9 Applies to spouses aged 60 to 63. Spouses 63 and older receive benefits for two years.

10 At age 65, spouse entitled to an annuity that as funded by eight percent of all benefits paid up to age 65.

11 Or 26 times the workers’ average weekly net earnings, whichever is greater.

12 Or until youngest child reaches age 18.

13 Replaced by an annuity equal to the cumulative total of a five percent monthly reserve.

14 Minimum payment. Spouse aged 40 years receives $55,555.55. This amount is reduced by $1388.88 for every year younger than age 40 and increased by that same amount for every year older than age 40, up to a maximum of $83,333.30.

15 Or until the worker would have reached age 65, whichever is greater.

16 Minimum payment. Lump sum is equal to the workers’ gross annual income multiplied by a factor that varies with the surviving spouse’s age. This factor increases from 2 for those spouses age 20 and younger up to 3 for spouses aged between 40 and 45, and then declines to 1 for spouses aged 65 or older. The maximum benefit is $147,000.

17 Limits apply to spousal benefits only. Benefits for children are paid until age 18 (22 for students). Duration limit varies from one year for spouses age 34 and less, up to three years for spouses aged 45 to 54, to two years for spouses aged 55 or over.

18 Varies with the number of dependents. Where there is one or more totally dependent minor children, weekly payments continue after the maximum aggregate benefit is exhausted until the youngest child reaches age 18.

19 Or balance of award, whichever is less.

20 Or age 65, whichever provides greater benefits.

21 Applies to spouse alone.

22 312 x maximum weekly benefit for total disability.

23 Or balance of the award, whichever is less.

24 Or 20 years of benefits, whichever is greater.

25 Or balance of award, whichever is less.
Lesser of 500 weeks or until age 21.

Or balance of award, whichever is less.

Includes cost of burial.

Benefits terminate when decedent employee would have qualified for Social Security benefits, which is presumed to be age 65.

250 multiplied by the state average weekly wage. Applies only to spouses who are self-sufficient.

Qualified for exemption as a dependent under the Internal Revenue Code.

An additional $100 is paid for each dependent child.

Minimum payment. Varies with number of dependent children. Includes burial expense.

400 multiplied by maximum benefit.

First 312 weeks of benefits, payment is equal to the remaining payments from time of remarriage to 312 weeks, limited to 312 weeks. After 312 weeks, no remarriage award.

Except for benefit termination due to the death of the surviving spouse, the minimum aggregate payable is $228,030. This includes a spouse who is older than 62 years.

Payment equal to monthly wage of decedent worker.

Maximum aggregate award is equal to 4 times the average annual earnings of the decedent worker.
Table 3 — Spousal Benefits in British Columbia

<table>
<thead>
<tr>
<th>Claimant Age</th>
<th>Number of Dependent children</th>
<th>No children</th>
<th>One child</th>
<th>More than one child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Younger than 40</td>
<td></td>
<td></td>
<td>85 percent of compensation paid to spouse with more than one child</td>
<td>Equivalent to compensation paid to worker with PTD plus $240.09 per month for each child beyond two.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lump sum of $36,948.28. No periodic benefits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aged 40 up to 50</td>
<td></td>
<td>$775.79 per month plus one-eleventh of the difference between $775.79 and the amount that 50-year-old claimant would receive, for each year between 40 and 49.</td>
<td>85 percent of compensation paid to spouse with more than one child</td>
<td>Equivalent to compensation paid to worker with PTD plus $240.09 per month for each child beyond two.</td>
</tr>
<tr>
<td>50 and older</td>
<td></td>
<td>60 percent of compensation paid to spouse with more than one child, but not less than $775.79 per month</td>
<td>85 percent of compensation paid to spouse with more than one child</td>
<td>Equivalent to compensation paid to worker with PTD plus $240.09 per month for each child beyond two.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Expected Benefits</td>
<td>Index</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------------</td>
<td>--------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Canada</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alberta</td>
<td>$ 186,052</td>
<td>59.84%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>British Columbia</td>
<td>$ 497,907</td>
<td>152.27%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manitoba</td>
<td>$ 150,808</td>
<td>54.31%</td>
<td></td>
<td></td>
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<tr>
<td>New Brunswick</td>
<td>$ 269,363</td>
<td>97.81%</td>
<td></td>
<td></td>
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<tr>
<td>Newfoundland</td>
<td>$ 324,391</td>
<td>113.18%</td>
<td></td>
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<tr>
<td>Nova Scotia</td>
<td>$ 161,901</td>
<td>60.83%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>$ 901,132</td>
<td>267.58%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>$ 141,259</td>
<td>53.45%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quebec</td>
<td>$ 106,585</td>
<td>35.72%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>$ 119,472</td>
<td>43.62%</td>
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<td></td>
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<tr>
<td>Northwest Territories</td>
<td>$ 479,976</td>
<td>123.69%</td>
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<tr>
<td>Yukon</td>
<td>$1,021,132</td>
<td>273.07%</td>
<td></td>
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<tr>
<td><strong>United States</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>$ 98,219</td>
<td>38.99%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>$ 177,433</td>
<td>54.76%</td>
<td></td>
<td></td>
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<tr>
<td>Arizona</td>
<td>$ 127,943</td>
<td>48.27%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>$ 132,045</td>
<td>58.91%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>$ 113,275</td>
<td>35.32%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>$ 267,545</td>
<td>93.90%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>$1,555,182</td>
<td>414.68%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>$ 245,293</td>
<td>78.78%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DC</td>
<td>$ 827,097</td>
<td>204.41%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>$ 65,191</td>
<td>25.44%</td>
<td></td>
<td></td>
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<tr>
<td>Georgia</td>
<td>$ 139,761</td>
<td>49.72%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hawaii</td>
<td>$ 157,801</td>
<td>57.78%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>$ 80,891</td>
<td>33.70%</td>
<td></td>
<td></td>
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<tr>
<td>Illinois</td>
<td>$ 252,005</td>
<td>78.58%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>$ 121,956</td>
<td>44.79%</td>
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<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>$ 233,958</td>
<td>94.78%</td>
<td></td>
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</tr>
<tr>
<td>Kansas</td>
<td>$ 95,792</td>
<td>38.60%</td>
<td></td>
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</tr>
<tr>
<td>Kentucky</td>
<td>$ 184,213</td>
<td>74.62%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>$ 139,171</td>
<td>54.43%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>$ 102,218</td>
<td>43.90%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>$ 276,588</td>
<td>93.31%</td>
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</tr>
<tr>
<td>Massachusetts</td>
<td>$ 144,247</td>
<td>41.80%</td>
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</tr>
<tr>
<td>Michigan</td>
<td>$ 138,381</td>
<td>42.12%</td>
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<tr>
<td>Minnesota</td>
<td>$ 133,704</td>
<td>46.06%</td>
<td></td>
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</tr>
<tr>
<td>Mississippi</td>
<td>$ 53,025</td>
<td>24.19%</td>
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</table>
Table 4 (Continued)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Expected Benefits</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missouri</td>
<td>$ 246,398</td>
<td>90.69%</td>
</tr>
<tr>
<td>Montana</td>
<td>$ 99,288</td>
<td>47.20%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>$ 222,719</td>
<td>95.75%</td>
</tr>
<tr>
<td>Nevada</td>
<td>$ 248,683</td>
<td>90.42%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$ 250,598</td>
<td>88.47%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$ 259,503</td>
<td>71.41%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$ 100,083</td>
<td>43.12%</td>
</tr>
<tr>
<td>New York</td>
<td>$ 335,616</td>
<td>89.13%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$ 95,922</td>
<td>37.47%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>$ 130,937</td>
<td>61.25%</td>
</tr>
<tr>
<td>Ohio</td>
<td>$ 276,420</td>
<td>97.04%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>$ 172,077</td>
<td>73.11%</td>
</tr>
<tr>
<td>Oregon</td>
<td>$ 277,775</td>
<td>103.16%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$ 229,612</td>
<td>78.81%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$ 427,651</td>
<td>160.39%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>$ 110,320</td>
<td>45.15%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>$ 203,482</td>
<td>100.55%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>$ 108,242</td>
<td>41.17%</td>
</tr>
<tr>
<td>Texas</td>
<td>$ 278,206</td>
<td>96.19%</td>
</tr>
<tr>
<td>Utah</td>
<td>$ 219,577</td>
<td>89.74%</td>
</tr>
<tr>
<td>Vermont</td>
<td>$ 499,756</td>
<td>204.74%</td>
</tr>
<tr>
<td>Virginia</td>
<td>$ 125,363</td>
<td>45.13%</td>
</tr>
<tr>
<td>Washington</td>
<td>$ 251,217</td>
<td>88.54%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>$ 228,690</td>
<td>93.94%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>$ 83,638</td>
<td>31.91%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>$ 81,640</td>
<td>35.13%</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Award</td>
<td>Beneficiary</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>--------------------------------------------------------------</td>
</tr>
<tr>
<td>Alabama</td>
<td>$7,500</td>
<td>Decedent’s estate</td>
</tr>
<tr>
<td>Alaska</td>
<td>$10,000</td>
<td>Second Injury Fund</td>
</tr>
<tr>
<td>Arizona</td>
<td>$1,150</td>
<td>Special Fund</td>
</tr>
<tr>
<td>Arkansas</td>
<td>$1,000</td>
<td>$500 to Second Injury Fund, $500 to Death &amp; Permanent Total Disability Bank Fund</td>
</tr>
<tr>
<td>California</td>
<td>$125,000</td>
<td>Department of Industrial Relations</td>
</tr>
<tr>
<td>Colorado</td>
<td>$15,000</td>
<td>Subsequent Injury Fund</td>
</tr>
<tr>
<td>Connecticut</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>DC</td>
<td>$5,000</td>
<td>Special Fund</td>
</tr>
<tr>
<td>Florida</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>$10,000</td>
<td>State Treasury</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$38,688</td>
<td>Special Fund</td>
</tr>
<tr>
<td>Idaho</td>
<td>$10,000</td>
<td>State Treasury</td>
</tr>
<tr>
<td>Illinois</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>$15,000</td>
<td>Second Injury Fund</td>
</tr>
<tr>
<td>Kansas</td>
<td>$18,500</td>
<td>WC Fund</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$25,000</td>
<td>Decedent’s estate</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$40,000¹</td>
<td>Parents</td>
</tr>
<tr>
<td>Maine</td>
<td>$42,260²</td>
<td>Employment Rehabilitation Fund.</td>
</tr>
<tr>
<td>Maryland</td>
<td>None</td>
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</tr>
<tr>
<td>Massachusetts</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>$25,000</td>
<td>Special Fund</td>
</tr>
<tr>
<td>Mississippi</td>
<td>$500</td>
<td>Second Injury Fund</td>
</tr>
<tr>
<td>Missouri</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>$1000³</td>
<td>Subsequent Injury Fund</td>
</tr>
<tr>
<td>Nebraska</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>$5000</td>
<td>$2000 to Vocational Rehabilitation Fund; $3000 to Re-opened Case Fund</td>
</tr>
<tr>
<td>North Carolina</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>$2000</td>
<td>Non-dependent children⁴</td>
</tr>
<tr>
<td>Ohio</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

¹ WC Fund; ² Employment Rehabilitation Fund; ³ Subsequent Injury Fund; ⁴ Non-dependent children
Table 5 (Continued)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Award</th>
<th>Beneficiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pennsylvania</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$1500</td>
<td>Second Injury/Curative Center Fund</td>
</tr>
<tr>
<td>South Carolina</td>
<td><strong>5 $500</strong></td>
<td>Nondependent children</td>
</tr>
<tr>
<td>South Dakota</td>
<td>$500</td>
<td>Second Injury Fund</td>
</tr>
<tr>
<td>Tennessee</td>
<td>$10,000</td>
<td>Decedent’s estate.</td>
</tr>
<tr>
<td>Texas</td>
<td>$178,724</td>
<td>Second Injury Fund</td>
</tr>
<tr>
<td>Utah</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>$500</td>
<td>Second Injury Fund</td>
</tr>
<tr>
<td>Virginia</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>$10,000</td>
<td>Supplemental Pension Fund</td>
</tr>
<tr>
<td>West Virginia</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td><strong>7 $500</strong></td>
<td>Children’s Fund</td>
</tr>
<tr>
<td>Wyoming</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

1 $20,000 to each parent.
2 100 times the state average weekly wage.
3 An additional five percent of the previous fiscal year’s compensation costs may also be assessed.
4 If there are no non-dependent children, award is made to brother or sisters. If no non-dependent children, award is made to grandparents.
5 Commuted amount for wholly dependent survivors less burial expenses.
6 If non nondependent children, amount is paid to decedent’s father and mother. If no mother or father, then amount is paid to the Industrial Commission.
7 Amount otherwise payable (4 times decedent worker’s average annual earnings.)