

I. INTRODUCTION

On September 14, 1983, Governor James J. Blanchard issued the following statement and charge in appointing Theodore J. St. Antoine as Special Counselor on Workers' Compensation:

In the past two decades, workers' compensation has been the subject of much discussion and debate among all segments of the industrial community and the several branches of state government in Michigan. During this period, three separate commissions have engaged in extensive analysis of the Michigan Workers' Compensation Law. In 1980, and again in 1981, substantial amendments were added to the statute. Nonetheless, the controversy over this system continues.

Important and deserving interests are at stake. The employee who is the victim of industrial accident or disease is entitled to prompt, reasonable compensation. The employer who must pay should be burdened with no more than fair and appropriate costs. The public generally must be assured of a vibrant, competitive economy in this State.

In order to respond to the pressing need for further review in this area, I hereby appoint Theodore J. St. Antoine, James E. and Sarah A. Degan Professor of Law at the University of Michigan, as Special Counselor on Workers' Compensation, with the following duties and functions:

- (1) To review and analyze the operation of the existing Michigan statutes, including the recent amendments, to determine how adequately and effectively they are protecting employees against losses from industrial accident or disease without imposing improper or excessive costs on employers;
- (2) To examine current administrative practices and procedures to determine whether all parties are being fairly treated in the various proceedings and whether the law is being enforced in a timely and efficient manner;
- (3) To determine if there are distinctive areas of system abuse in Michigan which may make the system more costly;
- (4) To examine the current insurance and funding arrangements to determine whether adequate, efficient, and appropriate provision has been made for the coverage of various industrial injuries and

disabilities;

(5) To compare the standards and procedures under the Michigan statutes with those of other industrial states to determine whether the insurance coverage is effectively competitive with that of other industrial states;

(6) To consult with employers, employees, labor organizations, the medical profession, insurance carriers, legal counsel, government officials, and other appropriate individuals and groups to determine their needs and concerns and the impact of existing administrative procedure and practice on their various interests;

(7) To report his findings and conclusions to the Cabinet Council on Jobs and Economic Development for their review, consultation with the Governor's Commission on Jobs and Economic Development and recommendations to the Governor, concerning the amendment or alteration of existing administrative procedures and law so as to ensure a workers' compensation system for the State of Michigan that will be just, humane, and equitable for all parties.

Governor Blanchard added: "I am pleased that leaders of business and labor have agreed to this process and are pledging to work to implement the special counselor recommendations. This process also has the support of the legislative leadership, which is a strong signal that the Special Counselor's work will indeed help Michigan set aside its traditional business-labor warfare over workers' compensation."

During the past fourteen months I have met with many interested groups and individuals in this State. I am deeply indebted to all of them for their generosity in taking the time and trouble to arrange presentations, compile data, and provide frank and illuminating comments on the actual operation of the Michigan compensation system. Organizations with which I consulted, sometimes more than once, included the Michigan Manufacturers Association and the "Big Three" automobile companies; the Michigan State Chamber of Commerce; the Michigan State AFL-CIO, along with representatives of the Auto Workers, the Steelworkers, and other major unions; the Economic Alliance; the Council of the Workers Compensation Section of the State Bar; the Governor's Entrepreneurial and Small Business Commission; the Governor's Commission on Jobs and Economic Development; the Greater Detroit Chamber of Commerce; the Michigan Mutual Insurance Company; the Michigan Self-Insurers' Association; the State Accident Fund; the Michigan Merchants Council; the Michigan Trial Lawyers Association; and the Michigan Injured Workers Organization. I am also especially indebted to several distinguished members of both the

plaintiffs' and the defendants' compensation bars for speaking with me privately to give me the benefit of their technical expertise. Numerous other individuals and groups submitted their views in writing.

Members of both the legislative and the executive branches of State government were most giving of their time, counsel, and assistance. I spoke with the majority and the minority leadership and Labor Committee members from both the Senate and the House. There were frequent sessions with the Director of the Commerce Department, the Director of the Labor Department, the Director and the Deputy Directors of the Bureau of Workers' Disability Compensation, and a representative group of administrative law judges and members of the Workers' Compensation Appeal Board. Other officials consulted in State government included the Insurance Commissioner, the Director of Management and Budget, the State Personnel Director, the State Business Ombudsman, and various members of their staffs. In addition, I spent one day each visiting with the Directors and staff members of the workers' compensation systems of Minnesota, Wisconsin, and Ohio. In the course of the year I also attended two national conferences on workers' compensation, one at the University of Maine and the other at the Cornell School of Industrial and Labor Relations.

Finally, I was fortunate enough to get several leading authorities on workers' compensation to provide specialized studies on various aspects of the subject. Professor John F. Burton, Jr. of Cornell, Chairman of the 1971-72 National Commission on State Workmen's Compensation Laws, undertook a comparative study of workers' compensation costs and benefits in various states, with particular emphasis upon the Great Lakes region. He was assisted by one of the most knowledgeable persons concerning the Michigan system, Dr. H. Allan Hunt, Research Director of the W.E. Upjohn Institute for Employment Research, and by Alan B. Krueger and Dane M. Partridge. Professor Arthur Larson of Duke, author of the standard treatise on workers' compensation law, prepared a comparative review of the currently hot legal topics of exclusivity of remedy and third-party suits. Professor Solomon Axelrod of the University of Michigan School of Public Health reported on the timely and sensitive issue of medical costs containment. Dr. Axelrod also arranged for Eugenia S. Carpenter, Research Scientist at the Michigan School of Public Health, to investigate the important but often neglected area of vocational rehabilitation. Lastly, Professor Lawrence Joseph of Hofstra University School of Law prepared a comprehensive study of the treatment of occupational diseases in the workers' compensation systems of the Great Lakes states. I shall set forth the principal findings of all these studies in the main body of my report. The complete reports will eventually be made available in limited quantities in separate appendices.

Acknowledgment and sincere thanks are also due Michael Madden, who served as my liaison in Lansing throughout this project; Robert A. Boonin, my legal research assistant; and Nan Druskin, my indefatigable secretary.