II. HISTORICAL BACKGROUND

Workers' compensation was a pioneering form of no-fault insurance. By the beginning of the Twentieth Century, the rapid growth of industry in the United States, often marked by inadequate attention to the safety needs of working people, had produced a veritable plague of industrial accident. Yet injured employees seeking damages from their employer found that the common law had erected three almost insurmountable obstacles to their recovery. These doctrines, developed in the quite different preceding era of small, paternalistic, frequently family-operated firms, were contributory negligence, the fellow servant rule, and assumption of risk.

Under the principle of contributory negligence, even if an employee could establish that the employer's negligence caused an accident, the employer would not be liable if it could show that negligence on the part of the employee contributed in any way to his injury. The fellow servant rule prevented recovery if the injury resulted from the negligence of a co-worker. Assumption of risk was based on the notion that a worker was free to bargain for wages commensurate with the hazards of a given job. Thus, voluntary acceptance of employment under obviously dangerous conditions amounted to an assumption of the risk that injury might result from those conditions.

After some halting efforts were made to modify the harshness of the common law doctrines, a whole new concept emerged to sweep the country in the second decade of this century. Drawing upon European antecedents, all but eight of the states had enacted workers' compensation laws by 1920. These incorporated the principle that industrial accident was part of the cost of the finished product, and that compensation for resulting death or injury should be paid by the ultimate consumer, without regard to the fault of either employer or employee. In their ultimate form, workers' compensation laws represented an important trade-off between employers and employees. Employers lost their traditional common law defenses, but on the other hand employees lost the possibility of maintaining tort actions and securing enormous damage awards from sympathetic juries. The ideal was a swift, sure, nonlitigious system to make the injured employee whole for his actual wage loss and medical expenses.

The Michigan statute was initially adopted as Public Act 10 of 1912. It applied to personal injury and death "arising out of and in the course of employment," except for that caused by an employee's own "intentional and willful misconduct." The law was substantially rewritten by Public Act 317 of 1969. Significant amendments were added in 1980 and 1981, and these will be a major concern of this report.

In 1979 Dr. H. Allan Hunt of the Upjohn Institute for Employment Research quoted from a 1962 speech by William Hart, then-Director of the Michigan Workmen's Compensation Department, setting forth Hart's catalog of the major

problems confronting the Michigan system at that time. They were as follows (quoted in H. A. Hunt, **Workers' Compensation in Michigan: Problems and Prospects** 7-8 (Upjohn 1979)):

1. There are too many contested cases.

2. There are too many redemptions.

3. Payments to workers are not prompt.

4. There is an inadequate consciousness of rehabilitation.

5. Maximums provided by law are not realistic.

6. Political propagandists are using the field of workmen's compensation to make required reforms impossible and to push regressive measures which endanger the whole program.

Dr. Hunt concluded that Hart's diagnosis was generally still valid seventeen years later, but omitted a number of problems confronting the system in 1979. As we shall see, the observations of both Hart and Hunt retain much force in 1984.