Workers' Perspectives on Settlements and Hearings

MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY
RESEARCH AND STATISTICS

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Brian Zaidman
William Boyer
David Berry

February 2013

Research and Statistics

443 Lafayette Road N.
St. Paul, MN 55155-4309
(651) 284-5025
dli.research@state.mn.us
www.dli.mn.gov/research.asp

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Acknowledgements

Many people contributed to our effort to collect and understand workers' perspectives on the resolution of their disputes and to produce this report. The survey development task force convened by the Department of Labor and Industry met for six months to focus the surveys and draft the questions. Members of the Workers' Compensation Advisory Council and Rehabilitation Review Panel provided additional feedback on the surveys. Peter Butler, of the Management Analysis and Development division of Minnesota Management and Budget, is credited with the successful mailing and collection of the surveys. Peter provided invaluable guidance and input to finalize the surveys and the cover letters and supervised the survey mailing and data entry processes. Eduardo Wolle and Francisco Gonzalez provided the Spanish translations of the cover letters and surveys. Kate Berger of DLI provided helpful comments and assistance with the statutory citations used in this report. Any errors or omissions remaining in this report are the responsibility of the authors.

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Executive summary

In a 2009 report, *Oversight of Workers' Compensation*, the Office of the Legislative Auditor (OLA) recommended the criteria for approving workers' compensation claim settlement agreements be adjusted to ensure that settlements are in the workers' best interests.

In response to the OLA recommendation, the Department of Labor and Industry (DLI) surveyed injured workers to collect information about:

- whether workers consider their settlements to be voluntary;
- whether workers feel pressured to settle their claims;
- the extent to which workers consider themselves informed about their claims, their disputes and their settlements;
- the workers' experiences after their settlements; and,
- whether the experiences of workers with settlements are similar to those of workers with disputes resolved through a hearing.

DLI surveyed injured workers with disputes resolved at the Office of Administrative Hearings (OAH) through settlements or through hearings resulting in a judge's findings and orders. The survey gathered workers' recollections, reactions and reflections about their experiences with the resolution of their disputes through the hearing and settlement processes. The workers' compensation system was established to provide benefits to workers with work-related injuries and illnesses, so it is important to understand the workers' point of view. This report presents injured workers' input and organizes it for use by policymakers and workers' compensation system administrators.

Survey methodology

The study included workers identified through the DLI workers' compensation claims database as having either a settlement (the settlement group) or a hearing with a findings-and-order (the hearing group), but not both, during 2009, 2010 and 2011. Three cohorts of cases were created within each of the survey groups, representing disputes resolved in each of the three resolution years. This enabled observation of changes, if any, related to the passage of time between the dispute resolution and the survey. The workers with settlements were randomly selected from settlements filed during the fall of each of the three years, while the workers with hearings comprised all workers with findings-and-orders between July 1, 2009, and December 31, 2011. Surveys were mailed in March 2012 to 1,061 workers with settlements and 536 workers with hearings.

The survey form consisted of 12 questions for workers with settlements and 11 questions for workers with hearings. (See Appendix B for the survey questions.) Workers were sent both English and Spanish versions of the appropriate survey. Workers were mailed up to three reminders to complete the survey.

Survey response

Completed surveys were received from 323 workers with a settlement and from 204 workers with a hearing. Eliminating cases where the survey was returned without a forwarding address, the response rate for settlement cases was 35 percent and the rate for hearings cases was 43 percent. The number of responses provided a 6 percent margin of error for the settlement group and 7 percent for the hearings group at the 95 percent confidence level.

Findings

Voluntary choice of settlement or hearing

- Workers with a hearing most often said they went to a hearing because they thought it was the best way for them to get their benefits (27 percent of workers), they wanted their case heard (24 percent) and they thought they had a good chance to win at a hearing (24 percent).
- Workers with a settlement most often responded they took a settlement because the dispute was taking too much time and effort (28 percent). The second most common response was they thought a settlement would be a fair way to end the dispute (24 percent).
- Sixty-six percent of the hearing group and 81 percent of the settlement group responded their attorney explained they had a choice to go to a hearing or seek a settlement.
- Forty-five percent of workers with settlements responded they felt pressure to settle their claim or go to a hearing, compared to 20 percent of workers in the hearing group.
- Workers with a settlement reported their attorney was the most frequent source of pressure to settle their claim, followed by the insurer and employer.

Understanding benefits and agreements

- Almost half of both survey groups said they understood the benefits involved in their dispute "some" or "not at all." Workers' recall of the dispute details decreased with the amount of time from the resolution.
- About two-thirds of workers with a settlement responded they understood their settlement terms "very well" or "mostly" and this percentage increased with time from the settlement. One-third of the settlement group indicated they had little or no understanding of their agreement.

Expectations and reconsiderations

- Majorities of both groups responded they had talked with their attorney about their chances of receiving a favorable ruling at a hearing.
- When asked if they would choose a hearing or a settlement if they could make the choice again, the settlement group was substantially less inclined than the hearing group to say they would do the same thing again. Only 29 percent of the workers in the settlement group said they would settle their claim and 38 percent said they would go to a hearing. Among workers with a hearing, 33 percent said they would go to a hearing again and only 13 percent would settle. The percentage of workers with a settlement who would prefer a hearing increased with time from the settlement.

Employment and medical condition

- About half of the workers in both survey groups were employed at the time of the survey.
- Among employed workers, 56 percent of the settlement group and 48 percent of the hearing group reported wages that were lower than their pre-injury wage.
- Workers most often reported their medical condition got worse, with 41 percent among workers with a settlement and 45 percent among workers with a hearing. The percentages reporting their medical condition got worse increased with duration from the dispute resolution.

Fairness

- Only 21 percent of the workers with a settlement considered their agreement a fair compromise, while 50 percent of the workers with a hearing considered the judge's ruling fair.

Dispute resolution and fairness comments

- Comments about fairness of the outcome and/or the dispute resolution-system were submitted by 434 of the 527 respondents; most of them expressed dissatisfaction with the workers' compensation dispute-resolution process. Comments from the hearing group resembled those of the settlement group concerning the length of the process and the workers' need for more information. The most common themes in the comments were:
    - financial pressure, including the stoppage of weekly benefits, refusal to pay for medical treatment, and refusal to pay for claim-related costs;
    - the length of the process, with some injured workers spending many months with no income while their case wound its way through the dispute-resolution system;
    - a lack of understanding of the claims and/or dispute-resolution process, often coupled with a misunderstanding of DLI's role;
    - denial of medical and rehabilitation treatment; and
    - the fairness of a system where insurers can achieve their goals by bringing pressures on injured workers.

Researchers' discussion

Taken as a whole, the survey results indicate that a large percentage of workers with settlements are concerned with the settlement process, the fairness of the outcome, their ability to work after the settlement and their resources to pay for their medical care. The survey results confirm many of the results of the OLA survey of workers with settlements. Proportionately more workers with settlements expressed negative comments about their experiences than did workers with a hearing, although workers in both groups raised many concerns with the dispute-resolution system and were not pleased that a dispute had occurred.

Results were mixed about whether workers voluntarily chose to settle their claims. Workers reported being given a choice and having talked with their attorneys about their chances of winning at a hearing, but a large proportion also reported feeling pressure to settle. Workers in the settlement group were more than twice as likely as workers in the hearing group to report feeling pressure to settle their claims, and the pressure came primarily from their attorneys, followed by insurers and employers.

The similarity between the hearing and settlement group responses regarding many issues shows that some of the concerns about settlements identified by OLA are issues for many workers with these types of disputes, regardless of how they are resolved. Both workers with a settlement and those with a findings and order through a hearing expressed frustration with the duration of the process, their own lack of information, and how the insurer had the benefit of time and could apply financial pressure. Workers with a settlement expressed more concern about employment and their medical care after settlements.

Researchers' recommendations

On the basis of the perspectives expressed by many workers, DLI and OAH should consider actions to improve workers' experiences and outcomes as their claims disputes are processed and resolved.

1. Consideration should be given to providing injured workers with additional information about the dispute-resolution process and outcomes. Injured workers need accessible, accurate, timely and impartial information to help them make decisions, have realistic expectations and feel involved in the dispute-resolution process. Information could be mailed to workers when a claim petition is filed.

2. Consideration should be given to changing the attorney fee structure to ensure worker attorney incentives are properly aligned with the interests of their clients. In particular, attention should be paid to whether the current structure unduly rewards attorneys when claims are settled.

3. On the basis of workers' comments expressing dissatisfaction with the length of the dispute-resolution process, consideration should be given to making administrative changes to ensure all disputes receive timely action. Consideration should be given to a fast-track system for primary liability hearings, such as is done for discontinuance conferences, so payments to injured workers can be decided promptly and the healing process can begin.

4. On the basis of workers' comments expressing concern for their employment status and future medical treatment, and the large percentage of the workers who indicated their medical condition was worse than at the time of the settlement, consideration should be given to the question of whether to approve settlements that close out vocational rehabilitation and future medical benefits.

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Introduction

In a 2009 report about the workers' compensation system, *Oversight of Workers' Compensation*, the Office of the Legislature Auditor (OLA) recommended "to ensure that voluntary settlements are in the workers' best interests, the Department of Labor and Industry should track settlement terms and outcomes for the workers and, as needed, adjust the criteria for approving such awards" (OLA, 2009, p. 76). The present study was conducted as part of the Department of Labor and Industry (DLI) process to respond to the OLA recommendation.

Minnesota's workers' compensation system was originally established in 1913 as a no-fault, non-litigious system to provide wage loss, disability and medical benefits for workers' injuries and illnesses arising out of and in the course of employment.[1] Since the early 1990s, the number and rate of Minnesota's workers' compensation indemnity claims have steadily decreased and the rate of indemnity claims involved in the dispute-resolution process has increased. The rate of filed indemnity claims[2] involved in any dispute increased by 37 percent, from a rate of 16 percent among workers injured in 1997 to an estimated 21 percent among workers injured in 2010 (Berry and Zaidman, 2012). The increased dispute rate is affecting the nature of Minnesota's workers' compensation system and research is needed to understand how to improve the system through administrative and statutory processes to reduce the rate of disputes and their effects on the system.

Settlements, in particular, have become a focus of attention. Settlements are noticeable because of the increasing amounts of stipulated benefits being paid. Twenty-four percent of workers with indemnity claims for 2010 are expected to receive lump-sum payments, an increase from 17 percent in 1997 (Berry and Zaidman, 2012). During this time the average amount of lump-sum payments per claim with these payments increased from $32,260 to $44,970, after adjusting for average wage growth. In contrast, the average amount of temporary total and permanent total benefits, per claim receiving those benefits, increased from $5,150 to $6,280.

This report presents the results of a DLI survey of injured workers with disputes resolved at the Office of Administrative Hearings (OAH) through a settlement or a judge's findings-and-order. If, as the OLA report indicates, workers have such disregard for settlements, why do so many workers settle their claims?

The present survey gathered workers' recollections, reactions and reflections about their experiences with the resolution of their claims disputes through the hearings and settlement processes. This report presents injured workers' input and organizes it for use by policymakers and workers' compensation system administrators. It is important to seek and include injured workers' opinions and recollections of their experiences with the resolution of their disputes and especially with the claims settlement process. Because of the nature of the questions asked of the workers, their responses are necessarily subjective. It is possible that contrasting views of the settlement and hearings processes would be obtained from surveys of workers' attorneys, employers and insurers.

[1] Claims filed for wage loss or permanent partial disability benefits are termed indemnity claims; these require more than three days of work disability or a permanent disability. Other claims, which only require medical care, are identified as medical-only claims.

[2] Filed indemnity claims are claims for indemnity benefits, whether ultimately paid or not.

Background

Settlement agreements and current Minnesota statutes

Settlements are written agreements that close a claim or resolve a dispute. Settlements convert a set of benefits (or potential benefits) into a one-time payment reached through a compromise between an injured worker,[3] who is almost always represented by an attorney, and an employer, which, unless the company is self-insured, is represented by an insurance company and its attorney. The OAH conducts settlement conferences for disputes filed through a claim petition to achieve a negotiated settlement, where possible, without a formal hearing.[4] A stipulation for settlement is approved by an OAH judge.

The benefits involved in a settlement agreement usually include one or more types of indemnity benefits, such as temporary total disability, permanent total disability and permanent partial disability benefits, and may also include payment for past or future vocational rehabilitation and medical services. Some settlement agreements are designed to only resolve a dispute about benefits covering a specific time period, with the claim returning to "normal" activity after the settlement. Many settlement agreements close out only indemnity benefits, keeping workers' compensation medical care available for the injured worker, and some other agreements may be full, final and complete, in which all benefits are closed out. Settlement agreements include provisions for the payment of the workers' attorney fees and may include payments designated to medical and vocational rehabilitation service providers and to other intervenors. Although settlements are most often used to resolve disputes, some claims without disputes are closed through settlements. Claimant attorney fees are based on a percentage of indemnity benefits plus any additional amount awarded to the attorney upon application to a judge.

Approval of settlements is addressed in Minnesota Statutes section 176.231, subdivision 2:

> Settlements shall be approved only if the terms conform with this chapter.
>
> The commissioner, a compensation judge, the court of appeals, and the district court shall exercise discretion in approving or disapproving a proposed settlement.
>
> The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or the employee's dependent and the employer or insurer are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the commissioner, a compensation judge, or court of appeals.

[3] The term "injured worker" includes a worker with either an injury or an illness.

[4] Both DLI's Alternative Dispute Resolution unit and OAH provide mediation services if the parties agree to participate. Any type of dispute is eligible for mediation services. Mediation may be used to seek agreement on some or all of the issues in dispute. A mediation agreement is usually recorded in a mediation award. In some instances, the parties to a dispute enter into the mediation process and later reach a settlement agreement.

The OLA recommendation addresses the criteria by which the commissioner or a judge would consider a settlement "to be reasonable, fair, and in conformity with this chapter."

The Workers' Compensation Court of Appeals may set aside an award for cause, including a mutual mistake of fact, newly discovered evidence, fraud and a substantial change in condition.[5] To determine whether there has been a substantial change in condition, the court considers:

- a change in the worker's ability to work;
- additional permanent partial disability;
- a necessity for more costly and extensive medical care than previously anticipated; and
- a causal relationship between the injury covered by the settlement and the worker's current condition.

Minnesota's workers' compensation laws, which cover benefits and the resolution of benefit disputes, were amended in 1983 to express the intent of the Legislature that workers' compensation laws are not to be given a broad liberal construction in favor of either the employee or the employer. Minnesota Statutes section 176.001 states:

> It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases … Accordingly, the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

This intent is reinforced when deciding disputes, as addressed in Minnesota Statute section 176.021, subdivision 1a:

> Burden of proof. All disputed issues of fact arising under this chapter shall be determined by a preponderance of the evidence, and in accordance with the principles laid down in section 176.001. Preponderance of the evidence means evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth.
>
> Questions of law arising under chapter 176 shall be determined on an even-handed basis in accordance with the principles laid down in section 176.001.

Views and research about settlement agreements

Different jurisdictions use different terms for the agreements made between injured workers and their employers (represented by insurance companies) to convert a benefit stream into a lump-sum payment that usually closes the claim and ends further liability for the insurer. These agreements may or may not include a lump-sum payment for future medical care and rehabilitation. They are variously known as compromise and release agreements or settlements, lump-sum settlements, stipulation agreements or stipulation awards. The term settlement is used in this report to refer to all these types of agreements.

[5] Minnesota Statutes section 176.461.

The role of settlements in workers' compensation systems has been controversial since the establishment of state workers' compensation programs 100 years ago. In his historical review of the use of settlements, Torrey (2005, 2006), a judge with the Pennsylvania Department of Labor and Industry, described how the initial prejudice against lump-sum settlements gradually eroded to the point that settlements have become the norm in many states. A crucial question is whether workers' compensation should be regarded as an adversarial system where claims settlements should be expected. Torrey provided two objections against the use of settlements: (1) workers' compensation indemnity benefits are intended to be paid in installments as wage replacement; and (2) workers should receive all reasonable medical care. Settlements, intended as releasing insurers from their obligations, may defeat the intended purposes of workers' compensation systems.

The arguments for and against the use of settlements are based on two contrasting philosophical views. The first approach posits that workers' compensation systems are a form of social insurance and the state government's role is to look out for the best interests of injured workers. In this view, society as a whole has an interest in seeing that injured workers are properly compensated so that they and their families do not require relief from other government benefit programs and that workers are provided with support to return to work.

The second approach considers workers and employers to be free agents who have the right to determine the outcome of the workers' compensation claims process. In this view, workers' compensation is an insurance program that provides benefits in exchange for the exclusion of common law defenses, such as contributory negligence. An injured worker, with adequate information about the claim, the available benefits and their circumstances, and who is not coerced, is in the best position to decide whether to settle the claim.

Adherents of the social insurance approach contend some workers would spend their settlement awards within a few years and would not have funds available for continuing medical care and vocational rehabilitation to find a new job. While anecdotal accounts of such situations abound, there is no definitive recent empirical evidence supporting this view. Torrey cites research by Morgan, Snider and Sobol (1959), who interviewed Michigan workers following their settlements and found that many workers used their money to pay off debts and expenses, not for vocational rehabilitation, and by Cheit (1961) who found similar results among California workers. The settlement funds were not used as a replacement for the weekly benefits they would have used to pay ongoing expenses.

Torrey (2012) summarized his opinion as part of a collection of comments about the centennial of workers' compensation systems in the United States:

> The idea that an injured worker may, in a compromise settlement, freely give up his weekly workers' compensation benefits, or the potential right thereto, tender a release, and in exchange take a lump-sum, has always given pause. Society has been concerned that the insurer may take advantage of the worker – or, in any event, that the worker will dissipate the lump-sum, leaving other programs the task of providing for his or her weekly maintenance and medical treatment needs.
>
> Because of these paternalistic concerns, workers' compensation programs have traditionally regulated compromise settlements. The level of oversight has always varied considerably among states, but the national trend has been in the direction of *lessened*

> scrutiny. Injured workers, however, still need and deserve state protection, and society retains a large stake in workers' decisions to compromise-settle their cases. We should encourage members of state legislatures to recall, before they are tempted to deprive agencies of their settlement oversight authority, that many injured workers remain highly leveraged and disempowered.

As recounted in Torrey's articles, some researchers and commentators have argued that settlements should be rare events, should not be allowed in disputes about primary liability and should be approved by the state agency only after thorough review, far beyond verifying the worker understood the settlement terms. Even early in the history of workers' compensation, some commentators thought allowing for settlement of disputes about primary liability would provide an incentive for insurers to deny claims. However, Mashaw (1988), writing in favor of allowing settlements, argues that workers' compensation systems cannot resolve all disputes on a purely objective basis. Injured workers often need the money to pay bills, which puts the insurers in a superior bargaining position. Workers might be acting rationally given their leveraged predicament, so one could question whether the state should intervene to help workers get a "better" outcome.

A different perspective is offered by Neuhauser (2010) in a policy paper for Montana's workers' compensation advisory board. He presents arguments in favor of allowing settlements of medical benefits, saying settlements offer positive outcomes to both workers and insurers. Citing research showing that workers' compensation systems allow for more medical services and result in higher medical costs than non-workers' compensation medical care, he contends settlements may limit the over-consumption of medical treatments and avoid the high costs of workers' compensation medical care. These savings could reduce employers' workers' compensation insurance premiums. While not all injured workers might be interested in pursuing a settlement, Neuhauser contends some workers would trade having surgery for the freedom to spend the money as they see fit, especially if the surgery would not greatly enhance their quality of life.

The closure effect is another hypothesis generating research about settlements. The closure effect posits that workers involved in workers' compensation claims disputes may feel pressure to prolong their disabilities to maintain their benefit eligibility and that claim closure through a settlement allows workers to get on with their lives. Hyatt (2010) sought evidence of the closure effect by linking workers' compensation and state employment databases in California for the six quarters before and after the workers' settlements. He reasoned that while claims are open, injured workers are reminded of their injury, which is a stressful event, and keeping claims open creates even more stress about actions that might reduce benefits. Injured workers may not want to return to work before a settlement for fear of reducing the size of their lump-sum awards. Hyatt found evidence that settlements provide a sense of closure because workers with settlements resulting in a lump-sum award that closed their claim had increased wages and labor entry rates and decreased labor exit rates following their settlements, compared with workers who received periodic benefits following their settlements.

Savych (2012) compared state employment records and insurers' workers' compensation claim files to study return-to-work trends among injured Michigan workers with settlements. He was looking to compare the closure effect with the income effect, which posits that a sizable lump-sum award may give workers less immediate need for returning to work. He found that the majority of workers were unemployed at the time of their settlement and remained unemployed for one year following their settlement (61 percent of the sample), but that the percentage of workers who were employed

one year later was greater than the number employed at the time of the settlement, increasing from 25 percent of the total to 32 percent. While this result was the net change in employment, there were employment changes in both directions, providing evidence for both the closure and income effects. Thirty percent of the workers who were employed at the time of settlement left employment within the following year and 19 percent of the workers unemployed at the settlement were later employed. Overall employment increased because of the larger number of workers not employed at the time of their settlement.

In a paper written for a Washington State advisory group considering changes to that state's workers' compensation statutes, Hunt and Barth (2010) reviewed the arguments for and against settlements and examined recent changes in other states' statutes and concerns about settlements expressed in some states, including the Minnesota Management and Budget (2008, described below) and OLA reports from Minnesota. In their analysis, workers' decisions whether to seek a settlement are based on financial pressure, the need or desire for current versus future spending, the degree of uncertainty about future work status and the extent of disability. They state a key problem with settlements is that what may seem like a reasonable compromise at the time of the settlement may turn out to be inadequate or excessive a few years later.

Hunt and Barth provided these recommendations for a state agency settlement policy that would help to minimize some of the problems uncovered by their review:

1. State agencies should carefully review settlement agreements.
2. State agencies should look broadly at the best interest of the worker, examining the entire range of issues.
3. Settlements should leave medical benefits open for a set period of time following the settlement to provide greater security for the injured worker and limited certainty for the insurer.
4. States should decide whether a dispute is needed before a claim can be settled and whether settlements should apply to primary liability cases.
5. Settlements should include a "cooling-off period" to allow both parties to reconsider the settlement.

Recent research about settlements in Minnesota

The increased dispute rate and cost of settlements has led to study of the characteristics of disputes, the conditions leading to disputes, their effects on Minnesota's workers' compensation system, and their effects on injured workers. DLI conducted a dispute issue tracking study beginning in 2006, and published reports involving disputes about medical benefits (Berry, 2009), vocational rehabilitation benefits (Berry, 2010a) and disputes initiated by the filing of a claim petition (Berry, 2010b). Disputes were defined as consisting of one or more issues that shared at least one event with other issues in the group. These reports detailed the issues in dispute, the reason for the dispute, and the events and timing of events involved in resolving the issues through the various resolution paths taken. The data used in these reports was gathered by reading the dispute documents filed with DLI; this information is not entered into the department's workers' compensation claims database.

The claim petition report (Berry, 2010b) documented the details of disputes initiated with claims petitions filed in 2003, and coded in 2008 and 2009. This allowed enough time for the disputes and

their constituent issues to make their way to resolution. The most common issues documented in these disputes, by type, involved:

- temporary total disability, 63 percent;
- temporary partial disability, 30 percent;
- permanent partial disability, 30 percent;
- permanent total disability, 12 percent;
- office or clinic visit, 32 percent;
- surgery, 25 percent;
- diagnostic imaging, 19 percent; and
- eligibility for vocational rehabilitation consultation, 32 percent.

The point in dispute, also called an insurer's defense, is the reason the insurer and employee disagree about whether the service at issue should be provided or paid for. There can be multiple points in dispute for any issue. The most common point in dispute was primary liability (54 percent of disputes), where the insurer asserts the injury or illness generating the need for benefits or services is not work-related. This was closely followed by causation (53 percent of disputes), where the insurer asserts the condition generating the need for benefits or services is not related to the injury or illness accepted in the workers' compensation claim. For example, the injured worker may be seeking medical services for leg pain following an accepted claim for a back strain. Also included in causation are situations where the insurer asserts the injured worker has fully recovered from the effects of the injury and no further benefits or services are needed (29 percent of disputes).

Analysis of the dispute events showed that 53 percent of the claim petition disputes were scheduled for a hearing at OAH, with a hearing held in 11 percent of the cases. Resolution through a findings-and-order occurred for 10 percent of the claim petition disputes, 93 percent of the disputes with a hearing. An award on stipulation (settlement) resolved 75 percent of the disputes. The remaining 15 percent of claim petition disputes had other resolution or concluding events, such as an agreement of the parties (other than a settlement), an order for dismissal or withdrawal of the dispute.

The DLI report found many claim petition disputes took longer than one year to reach resolution. For disputes resolved through a findings-and-order, the length of time from filing the initial claim petition to the filing of the findings-and-order was 14.9 months at the median and 17.4 months at the mean. For disputes with a settlement after the dispute was scheduled for a hearing, the stipulation agreement occurred 15.2 months after the first claim petition at the median and 16.7 months at the mean. For disputes resolved with a settlement that were not certified or scheduled for a hearing, the award on stipulation occurred 9.3 months after the first claim petition at the median and 10.7 months at the mean.

A report about the dispute-resolution process by Minnesota Management and Budget (2008) recommended that injured workers should be interviewed about their experiences in the dispute-resolution system. The report included some of the information created in the DLI dispute issue tracking studies. It explained how workers' compensation claims might become involved in a complex set of dispute-resolution events, involving both DLI and OAH, that injured workers might not understand.

The Minnesota Management and Budget report was followed by the OLA report in 2009 that included separate surveys of injured workers, workers with disputes and workers with settlements. The study also involved meetings with workers' compensation system stakeholders, including

employer groups, labor union representatives and vocational rehabilitation providers to provide a different perspective on workers' compensation issues. The injured worker survey showed that most injured workers had positive opinions about the workers' compensation claims experience. More than two-thirds of the injured workers expressed satisfaction with the insurance company handling their claim, 74 percent reported no trouble getting needed medical treatment and 74 percent said their employer helped get the worker benefits. However, 38 percent of the injured workers agreed that obtaining their workers' compensation benefits was a frustrating experience. Among workers with claims disputes, 89 percent felt the dispute-resolution process was too complex and 88 percent said the process took too long.

The OLA survey documented general dissatisfaction among workers with their settlements and discomfort with their condition after the settlement. Only 21 percent of respondents felt their settlement amount was fair and 35 percent thought the parties negotiated fairly. Even though 57 percent thought that settling their claim was the right thing to do, some commented they felt pressured to settle, often because of financial distress.

The OLA settlement survey also reported that about 30 percent of the workers had not returned to work due to the effects of their injury. The OLA report expressed concerns with the practice of truncating workers' compensation benefits with a settlement before the worker had returned to work and before the worker's medical condition was fully stabilized.

The OLA recommendation to monitor and adjust the criteria for approval of settlement agreements was generated as a result of these findings. The OLA report concludes with this statement (p. 76): "Workers should not be settling workers' compensation claims under terms that defeat the purpose of workers' compensation — helping injured workers recover their health and get back to work at a wage comparable to what they earned before being injured."

The Workers Compensation Research Institute's (WCRI) series of CompScope™ reports use a set of quantitative measures to compare Minnesota's settled claims with those of other states. The CompScope™ Benchmarks 13 report for Minnesota (Belton, 2012) provided estimates of the percentage of claims receiving lump-sum benefits in Minnesota with estimates from 10 other states that use a similar method for compensating permanent partial disabilities. Each state's claims data were adjusted for injury type, industry and wages to make the estimates more comparable. The estimates were based on analysis of samples of claims with more than seven days of disability evaluated at 36 months average maturity.[6] WCRI found lump-sum settlements were slightly less common in Minnesota than the median of the 11 states, but were more expensive. WCRI reported that 18 percent of Minnesota's claims had a lump-sum payment, compared to a median of 20 percent, while the average lump-sum payment for Minnesota claims was $32,450, 56 percent higher than the median of $20,750. While lump-sum awards in excess of $50,000 occurred in only 7 percent of the lump-sum awards in the median state, 21 percent of Minnesota's lump-sum payment cases were in this award group. Most of Minnesota's cases that involved a lump-sum payment did not also have a separate payment for permanent partial disability benefits: 4 percent of claims had permanent partial disability benefit payments and a lump-sum payment and 14 percent had only a lump-sum payment.

[6] The WCRI CompScope™ results reported here are based on claims arising from Oct. 1, 2007, through Sept. 30, 2008, evaluated as of March 31, 2011.

Methodology[7]

Study design

This survey was designed to test the reliability of the OLA findings and to enhance its methodology. The OLA report focused most intensely on settlements and recommended DLI (and OAH) consider options for mitigating their negative effects on injured workers. One goal for this survey was to compare responses from workers who participated in a formal hearing with a judge's findings-and-orders to the responses of workers with settlement agreements. Both groups of workers start their claims disputes with the filing of a claim petition. Based on analysis of claim petitions from 2003, about half of the disputes filed through a claim petition result in scheduling a hearing (Berry, 2010b). Claims that resulted in a settlement agreement, either before a judge issued findings-and-orders or that settled without a hearing being scheduled, comprised the settlement group. Collecting survey responses from these two groups enables consideration of whether the issues identified by OLA are particular to settlements themselves or, more broadly, to the workers' experience of disputes, encompassing disagreements with the insurers and their employers, their accompanying delays in benefits and medical treatment, and the uncertainty disputes engender.

Another factor to consider is the effect of time on the workers' responses. The workers included in the OLA survey of workers with a stipulation agreement or a mediation award in 2007 had between eight and 20 months from the time of their settlement to receipt of the survey. This is a wide time period and workers' attitudes could change during this post-settlement period, creating differences between workers at eight months and those at 20 months. The DLI survey looked at three cohorts of injured workers, based on the time between the settlement or findings-and-order and survey completion, each one year apart. This cohort structure permitted DLI to investigate whether opinions and outcomes change, and to indicate whether these changes are similar for workers with a hearing and workers with a settlement.

Another reason for conducting the survey was to examine the generalizability of the OLA survey's results. The OLA survey was five pages long and completing the survey required 45 responses, a considerable commitment of time and effort. The OLA study included responses from 171 workers, out of an initial mailing of 1,000 surveys, with 303 undeliverable surveys. One reminder postcard was sent and no attempt was made to track down addresses of surveys returned as undeliverable. Because of the size of the survey and the response rate of 25 percent of deliverable surveys, the OLA survey respondents might not be representative of workers with settlements. To increase the response rate, DLI's goal was to ask fewer questions, fit the survey on a single sheet of paper and send multiple reminder mailings. DLI would attempt to find newer addresses for surveys returned with nondeliverable addresses. Results from a survey with a higher response rate would be more reliable and confidence in the results of both surveys would be increased to the extent that the two surveys' results were in accord.

Development of survey questions

A task force composed of members of the DLI workers' compensation Alternative Dispute Resolution and Compliance, Records and Training units provided input to the Research and Statistics unit, which developed the survey questions. The survey was designed to address issues implied in the OLA recommendation, especially the voluntary nature of settlements. Because of the differences between settlements and hearings, different question wordings and multiple response

[7] Many of the Methodology subsections are summaries; more complete descriptions are provided in Appendix A.

options were required for the two groups of workers. Instead of using the technical term "hearing," the surveys used the plain-language term "trial" to refer to the workers' compensation hearings. Appendix B contains the questions and multiple choice responses included in the two surveys.

Identification of the study population

Injured workers with settlements were selected into the study sample by limiting the settlement dates to three time periods: Oct. 1 through Dec. 31("fall") of 2009, 2010 and 2011. Injury dates were limited to October 1992 and later, which eliminated claims occurring prior to enactment of most of the statutes governing indemnity benefit duration. Claims with settlement agreements reached through mediation and filed as mediation awards were not included. Although some of the claims may have gone to an OAH hearing, none of the settlement cases had a findings-and-order or an order on discontinuance in their file, as these indicated judges' decisions and could influence workers' attitudes about settlements and hearings. There were approximately 4,500 claims meeting these requirements and 1,061 injured workers were randomly selected, with similar numbers from the fall of each year.

This procedure produced three cohorts of workers with settlements: the fall 2009 cohort had 28 to 31 months between the settlement and the survey (assuming a response in April 2012); the fall 2010 cohort had passage of 16 to 19 months, and the fall 2011 cohort had four to seven months between the settlement and the survey.

Compared to claims with settlements, there were many fewer claims with disputes that went to an OAH hearing and resolved through a judge's findings-and-order. All 536 cases with a judge's findings-and-order dated from July 1, 2009, through Dec. 31, 2011, and with injury dates on or after Oct. 1, 1992, were included to collect enough responses for analysis. Findings-and-order cases with a settlement agreement or a findings-and-order on appeal from a decision and order (issued after an administrative conference at DLI) were excluded.[8] The time cohorts were set by calendar year, with the period between findings-and-orders and the survey ranging from 28 to 34 months for the 2009 cohort, between 16 and 28 months for the 2010 cohort, and from 4 to 16 months for the 2011 cohort.

Despite the long injury period available for workers to be accepted into the sample, 83 percent of the workers in the sample had injuries between 2006 and 2010, and only 3 percent had injuries prior to 2000.

Non-indemnity claims accounted for 16 percent of the sample of cases ─ 31 percent of the hearings cases and 8 percent of the settlement cases. These cases included disputes of medical-only claims (which involve three or fewer days of disability) and claims for indemnity benefits that were denied primary liability and the denial was upheld by the judge. Cases where the worker is claiming indemnity benefits and a lump-sum settlement is paid, but the insurer maintains that liability has not been accepted, are designated as indemnity claims in the DLI claims database.

[8] Workers with hearings who received a settlement after the sample was selected or after the survey period remained in the analysis as part of the hearing group.

Survey mailing and data collection

The surveys were mailed in March 2012 with a cover letter signed by the DLI commissioner explaining this was a voluntary survey, responses would not affect recipients' workers' compensation benefits or claims status and that their identities and responses would be protected as private state data. Two reminder letters and a postcard were sent during the next five weeks to workers who had not responded. The cover letter and reminder mailings also included the internet address for the online version of the survey.

Limitations of the findings

This study used workers from two special subgroups who filed a claims petition and received either a settlement or a hearing outcome, eliminating from consideration workers who had both outcomes in their claims files. These cases may not be fully representative of other injured workers with disputes.

Younger workers and workers with less than one year of job tenure were more likely than other groups to change addresses post-injury and post-resolution and be in the undeliverable address group, and were more likely not to respond to the survey, and this may affect the generalizability of the results. Workers who changed addresses after the settlement may have done so to find employment or because of financial difficulties.

Overall Minnesota employment dropped from 2,680,000 in 2008 to 2,560,000 in 2010, affecting the return-to-work prospects for injured workers. The injured workers were competing with higher than normal numbers of unemployed workers for new jobs during this recession and immediate post-recession period. The economic situation may also have affected some workers' decisions about whether or not to settle their claim.

This survey asked for workers' recollections of their experiences, often a few years distant. The experiences since the settlement or hearing decision may have affected their memories, leading workers with relatively good experiences since their dispute to report better experiences during their dispute, relative to workers with poorer post-dispute experiences. It might be possible to conduct real-time surveys of workers, collecting data at key points in the process just after they happen.

Results

Survey response analysis

Of the 1,597 surveys mailed, 208 surveys (13 percent) were returned without a forwarding address and without an alternative address, or the survey sent to an alternative address was also returned as undeliverable. Eliminating these cases, the 527 responses result in a response rate of 38 percent, with a rate of 43 percent among workers with a hearing (204 responses) and 35 percent among workers with a settlement (323 responses). Fewer than one dozen surveys were completed online. The response rate decreased slightly with time from the dispute resolution, from 41 percent for the 2011 cases to 37 percent for the 2010 cases and to 35 percent for the 2009 cases. Using a 95 percent

confidence level, the responses provide a 6 percent margin of error for the settlement survey and a 7 percent margin of error for the hearings survey.[9]

Seventy-four percent of the surveys were received at the original address available in the DLI claims database or were automatically forwarded to the worker's new address. Thirteen percent of the surveys were returned and sent to a new address. It is likely that even more surveys were not received by the injured workers but the envelopes were never returned to DLI; in a few cases, the last survey reminder letter was returned as undeliverable, even though earlier mailings were not returned. The percentage of surveys returned as undeliverable increased with time from the settlement or hearing, from 8 percent for 2011 cases, to 11 percent for 2010 cases and up to 22 percent for 2009 cases.

Nineteen respondents returned Spanish surveys, with 14 Spanish responses among the workers with settlements (4 percent) and five among workers with a hearing (3 percent). Although a quantitative analysis is not available, many of the surveys returned without forwarding addresses were to workers with Hispanic surnames.

The response rate varied with some worker characteristics, and these differences could affect the generalizability of the results.

- Full-time workers were more likely to respond (40 percent response rate) than part-time (31 percent) or seasonal workers (33 percent).
- The response rate increased with worker age, from 18 percent for workers younger than 25 years old (at the time of the injury) and 17 percent for workers 25 to 34 years old up to 60 percent for workers 55 to 64 years old, with intermediate rates among workers with intermediate ages.
- The response rate increased with job tenure, from 11 percent among workers with fewer than three months of job tenure to 47 percent among workers with more than five years of job tenure.
- State and local government workers had the highest response rate among workers of any industry, with 55 percent.
- Among occupation groups, workers with management, business and financial occupations had the highest response rate (64 percent), followed by professional occupations (57 percent).

Characteristics of workers and their claims

The demographic and claims characteristics of the hearing and settlement respondents were compared with those of the survey nonrespondents, with all indemnity claims closed during the 2008 through 2010 period, and with claims with attorney fees that were closed during the 2008 through 2010 period in Appendix C. Differences between the survey respondents and the other groups are affected by the survey response patterns described in the previous section. The following points summarize and compare the characteristics of the hearing and settlement respondents.

[9] This is based on the assumption that the respondents represent a true random sample of workers with settlements or findings-and-orders from hearings. However, the hearings cases were not randomly selected; they included all qualifying cases during the time interval. The hearings survey margin of error should be considered an estimate assuming that the hearings respondents represent a true random sample of the hearings cases.

- The mean age at the time of injury was 50 years for hearing respondents and 48 years for settlement respondents. These were significantly older than the mean for all workers with closed claims, at 43 years.
- The mean length of the workers' compensation claim was 3.2 years for the hearing respondents and 3.3 years for the settlement respondents, compared to a mean duration of 1.0 years for all claims.
- The mean wage for the hearing respondents was $810 (adjusted to 2011 wage levels), compared to $750 among settlement respondents and $730 for all workers with closed claims.
- The mean amount of indemnity payments (adjusted to 2011 wage levels), including any lump-sum awards, was slightly higher for the settlement respondents, at $45,460, compared with $41,470 for the hearing respondents.
- The mean lump-sum payments (adjusted to 2011 wage levels) were similar for both respondent groups (among workers who had lump-sum payments), with $31,060 for the settlement respondents and $29,940 for the hearing respondents, although values were reported for 87 percent of the settlement cases and for only 25 percent of the hearing cases. (See footnote 4.)
- The attorney fees (adjusted to 2011 wage levels) were similar for both respondent groups, with an average of $5,470 for the hearing respondents and $6,210 for the settlement respondents.

One or more documents related to mediation activity were found for 26 claims in the settlement group. A detailed claim file examination of 10 randomly-selected claims from this group showed that there were no mediation awards, only three claims had a settlement within a few months of the mediation activity, and in only one settlement document was there any mention that the agreement was the result of mediation. Extrapolating to the entire settlement group, fewer than 10 of the 323 settlement respondents would have had a settlement following mediation activity.

Choice of hearing or settlement

Workers with a hearing were asked to select among six likely reasons for deciding to have a hearing instead of settling their claim and they were permitted to add additional reasons. Workers selected as many reasons as they wished. The frequencies of the different reasons are shown in Figure 1.[10]

More than half the workers who went to hearing reported they did so because they were not offered a settlement. The highest percentage (27 percent) among the remaining reasons was that workers thought pursuing their dispute to a hearing at OAH was the best way to get their benefits. The other reasons were chosen by between 20 percent and 24 percent of the respondents.

Workers with a settlement selected among five likely reasons for their choice of a settlement instead of a hearing ("going to trial"). The most common response was that a settlement was accepted because the dispute was taking too much time and effort (28 percent). Twenty-four percent of the workers thought a settlement would be a fair way to end the dispute and 21 percent thought a settlement was the best way to get their benefits.

[10] The "Year of hearing or settlement" used as a heading in this figure and in other figures refers to the year of the judge's findings-and-order for the hearing group responses and the year of the settlement award filing for the settlement group responses.

Figure 1 Reasons for settling claim or going to a hearing

		Year of hearing or settlement		
Hearing	Total	2009	2010	2011
Not offered settlement	51%	61%	55%	44%
Settlement offer not good enough	21%	16%	25%	18%
Good chance to win at trial	24%	26%	29%	19%
Wanted my case heard	24%	10%	28%	25%
Fair way to end dispute	20%	6%	26%	18%
Best way to get my benefits	27%	23%	25%	31%
Settlement	Total	2009	2010	2011
Afraid I might lose at trial	14%	12%	18%	12%
Dispute taking too much time and effort	28%	26%	29%	27%
Needed money quickly	15%	11%	15%	19%
Fair way to end dispute	24%	24%	23%	26%
Best way to get my benefits	21%	24%	23%	18%

The OLA settlement survey included a similar list of choices. The reason with the highest percentage was that the worker's attorney said it was the best way to get benefits (49 percent), followed by the workers' desire to discontinue the dispute-resolution process (36 percent) and that a settlement seemed like a fair way to end the dispute (19 percent).

Although the first question on the settlement and hearing surveys is a multiple choice question, it is significant that 144 of the respondents used the first opportunity on the survey form for written comments to communicate their experiences, including many respondents who also selected one or more of the multiple choice options. In many cases, workers' comments expanded on the multiple choice items selected. (See Appendix A for a description of the comment categories.)

As shown in Figure 2, the settlement group's comments were more than four times as likely to concern attorney issues compared to the hearing group. Typical comments for attorney issues are shown in the box below.

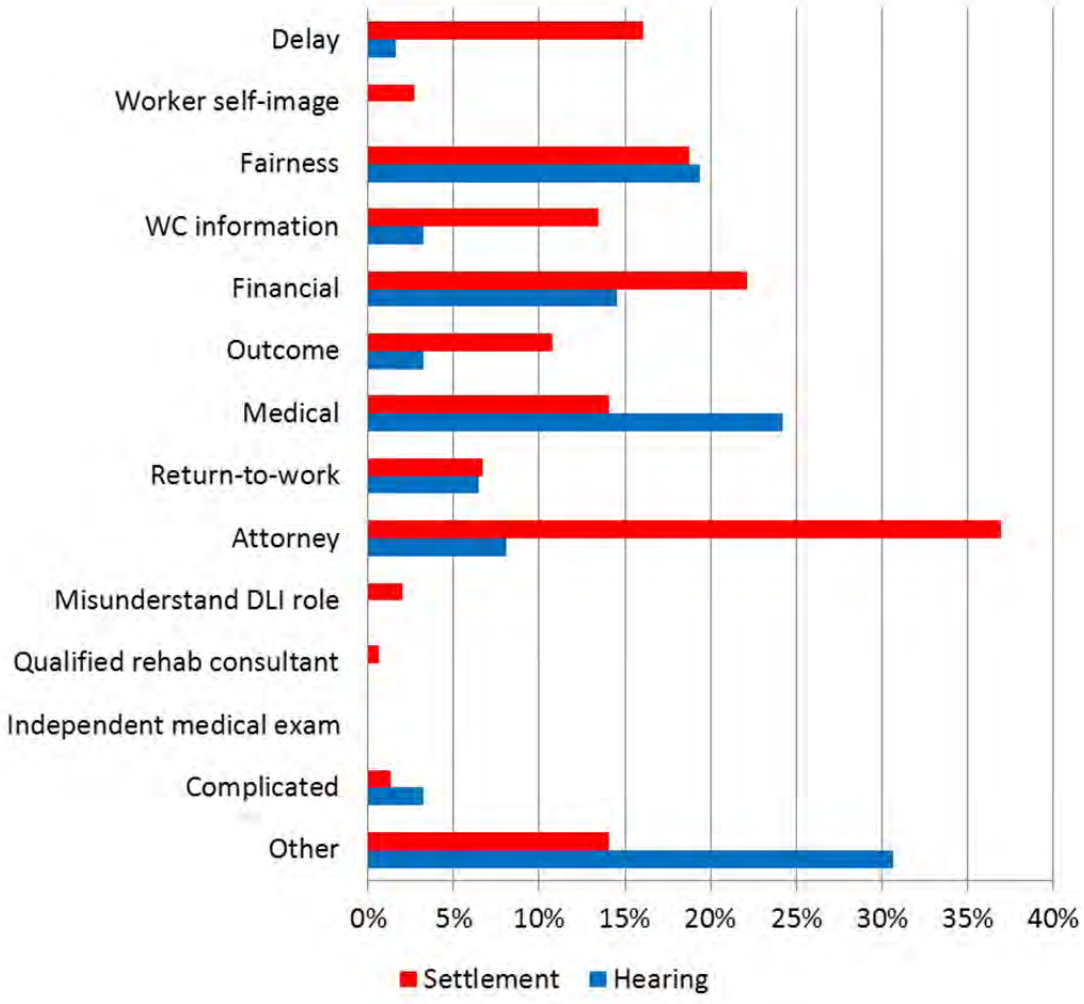
> *I was told by my attorney to settle out of court. I did not want to [settle.] I was wrongfully terminated because I filed a work comp claim[.] [My] attorney was lousy.*
>
> *Lawyer told me to [settle]. I wish I never settled.*

Similarly, workers with settlements were 10 times as likely as the workers with a hearing to cite delay and process duration as a reason for settling their claims and four times as likely to mention a lack of knowledge about the process or misunderstandings of the nature of their settlements. Medical issues were mentioned in 24 percent of the hearing group's comments, compared to 14 percent of settlement group's comments. The majority of medical comments concerned the denial of medical treatment or coverage.

A common theme among settlement survey respondents was that the length of the process placed great financial hardship on them and they felt forced to settle. Of the settlement survey respondents, 42 percent of those citing delay also cited financial issues and 29 percent commented on the unfairness of the system. Example comments expressing dissatisfaction with the length of process are shown in the box below.

> *The process was being [dragged] out too long[.] [It] had been two years since the injury occurred.*
>
> *Workers' comp court takes too long! The soonest was a year! And they stopped paying me already for two and a half years!*
>
> *Insurance company waited [until the] last day before trial to settle – takes way too long to get needed funds to live.*

Figure 2 Comments and reasons for choosing a hearing or a settlement



Both groups were asked whether their attorney explained they had a choice to go to a hearing or seek a settlement, a key marker of whether the worker voluntarily sought the settlement. As shown in Figure 3, 81 percent of workers with settlements responded that they were given a choice, as did 66 percent of the hearing group. There were no trends related to the time from the resolution event.

Figure 3 Attorney explained choice to go to a hearing or seek a settlement

	Hearing			Settlement		
Year of hearing or settlement	Yes	No	Don't remember	Yes	No	Don't remember
Total	66%	19%	14%	81%	11%	8%
2009	67%	26%	7%	78%	12%	10%
2010	65%	17%	17%	83%	9%	9%
2011	67%	19%	13%	81%	12%	8%

Another aspect of the voluntary nature of settlements is whether workers felt pressured to settle their claim. Forty-five percent of the workers with a settlement and 20 percent of workers with a hearing reported feeling pressure to either settle or go to a hearing (Figure 4). Among workers with a hearing, the percentage reporting pressure was higher for the 2009 cohort than for the other cohorts and the percentage that didn't remember if they were pressured also increased with time. The percentage of workers with a settlement who felt pressured also increased with time since the settlement, from 34 percent among workers in the 2011 cohort to 54 percent among workers in the 2009 cohort. Whether the actual amount of pressure was higher for settlements in 2009, when the economic recession was deepest, or whether workers increasingly attributed their decisions to pressure, as a result of their post-settlement experiences, is a matter for further research.

Figure 4 Worker felt pressure to settle or go to a hearing

	Hearing			Settlement		
Year of hearing or settlement	Yes	No	Don't remember	Yes	No	Don't remember
Total	20%	74%	6%	45%	51%	4%
2009	24%	66%	10%	54%	40%	6%
2010	21%	70%	8%	50%	48%	2%
2011	16%	80%	4%	34%	61%	5%

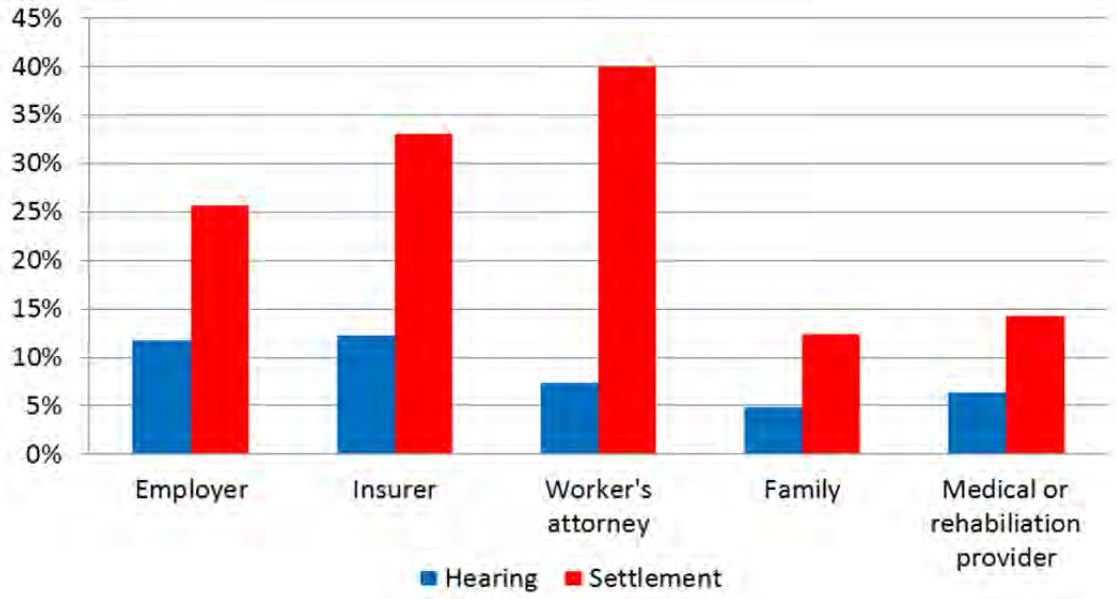
Workers were also asked to separately specify whether they experienced pressure to take a settlement and pressure to go to trial, and to specify which parties applied the pressure. As shown in Figure 5, workers with a settlement were much more likely to report feeling pressured to settle, but workers with a hearing were only slightly more likely to recollect feeling pressure to go to a hearing than to settle. (The percentages shown in Figure 5 are based on all responses, not just those of workers who reported any pressure.) Workers with a settlement reported the highest frequency of pressure from their attorney (40 percent out of a possible 45 percent with any pressure) followed by

pressure from the insurer and the employer. Workers who had a hearing reported similar, low frequencies of pressure from their employer, insurer and attorney.

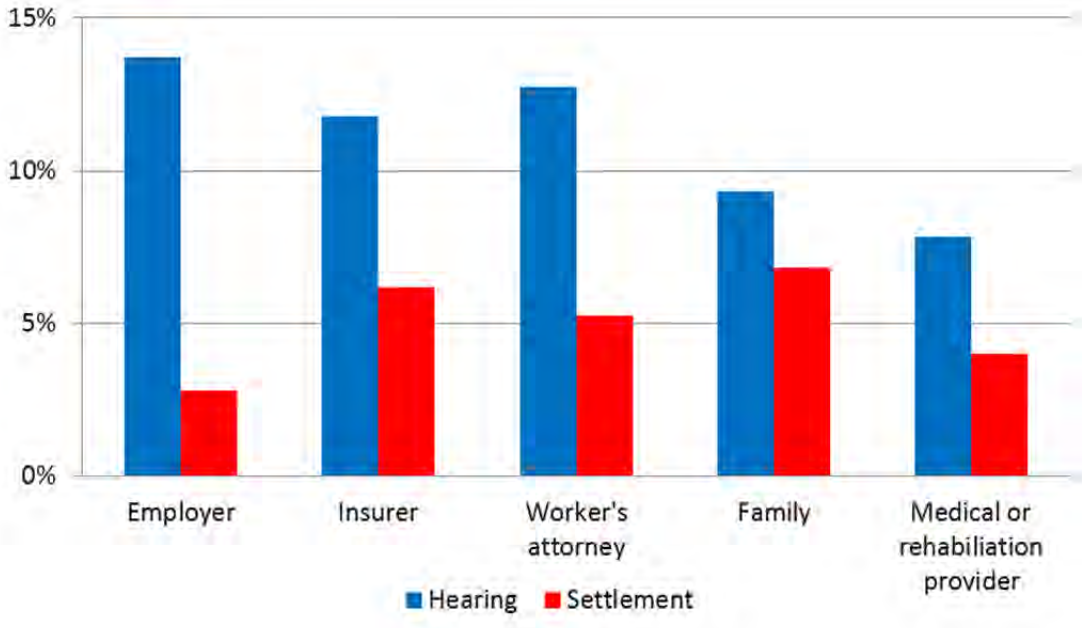
There were no differences in the amount of pressure from the various parties reported by workers in the different time cohorts, with two exceptions. Among workers with a settlement, the percentage reporting any pressure to settle from their attorney was 32 percent for the 2011 cohort, compared with 47 percent for the 2010 cohort and 48 percent for the 2009 cohort. Among workers with a hearing, the percentage reporting pressure from their family to go to a hearing increased from 4 percent for the 2011 cohort to 13 percent for the 2010 cohort and to 16 percent for the 2009 cohort.

Figure 5 Frequencies of reported pressure to settle or go to a hearing from various parties

A: Pressure to settle



B: Pressure to go to trial



Understanding workers' compensation benefits and the settlement agreement

Slightly less than half of both groups of workers said they understood the benefits involved in the dispute either "very well" or "mostly" (Figure 6). Among both groups: the percentage that could not recall the benefits at issue or how much they understood their benefits increased with time from the resolution date; and the percentage that recalled understanding their benefits "very well" or "mostly" decreased with time from the resolution date.

Figure 6 Understanding the benefits the worker might have won at a hearing

	Hearing					Settlement				
Year of hearing or settlement	Very well	Mostly	Some	Not at all	Don't remember	Very well	Mostly	Some	Not at all	Don't remember
Total	21%	28%	30%	17%	4%	21%	25%	29%	20%	5%
2009	16%	29%	32%	7%	16%	19%	23%	30%	21%	7%
2010	23%	23%	36%	17%	1%	21%	25%	28%	21%	6%
2011	21%	33%	24%	21%	2%	24%	26%	29%	19%	3%

The settlement group was also asked how well they understood what their settlement said (Figure 7). Almost two-thirds of the workers responded that they understood the settlement terms "very well" or "mostly," but that left one-third of the group with little or no understanding of their settlement.

Figure 7 Workers' understanding of settlement agreement

	Settlement				
Year of settlement	Very well	Mostly	Some	Not at all	Don't remember
Total	30%	33%	25%	9%	3%
2009	30%	37%	20%	9%	3%
2010	31%	34%	25%	7%	3%
2011	29%	30%	28%	10%	3%

Expectations and reconsiderations

Workers with a hearing were more likely to recall they talked with their attorney about their chances of winning at the hearing and were more likely than workers with a settlement to recall whether such a discussion took place (Figure 8).

Figure 8 Talked with attorney about chances of winning at a hearing

	Hearing			Settlement		
Year of hearing or settlement	Yes	No	Don't remember	Yes	No	Don't remember
Total	79%	15%	6%	56%	29%	15%
2009	77%	7%	17%	58%	24%	18%
2010	77%	16%	7%	52%	35%	14%
2011	82%	16%	2%	59%	28%	14%

The responses to whether workers would again choose to go to a hearing or a settlement revealed that many workers with settlements had misgivings about the course of action they followed (Figure 9). Both groups of workers preferred a hearing to a settlement. Workers with a settlement were now more likely to choose to go to a hearing than to seek a settlement and the likelihood increased with time following the settlement. A much higher percentage of workers with a hearing decision, in all three years, would again choose to go to a hearing than to settle their claim.

Figure 9 If doing claim again, would the worker settle or go to a hearing?

	Hearing				Settlement		
Year of hearing or settlement	Settle	Go to trial	Not offered settlement	Not sure	Settle	Go to trial	Not sure
Total	13%	33%	44%	10%	29%	38%	33%
2009	7%	33%	47%	13%	24%	45%	32%
2010	16%	33%	44%	8%	31%	36%	32%
2011	14%	34%	43%	10%	31%	35%	35%

Comparable responses from the OLA settlement survey provide mixed support for these results. In the OLA settlement survey, 48 percent of the workers (who all had settlements) agreed with the statement that settling was the right thing to do, 37 percent disagreed and 16 percent had no opinion. There was ambivalence about settlements, however, as 44 percent of the workers in the OLA survey agreed with the statement that they wish they had not settled their claim, 32 percent disagreed and 24 percent had no opinion.

Employment and medical condition

Employment patterns were similar for the two groups: About half of the workers were employed at the time of the survey, with employment lowest for workers with the least time since their dispute resolution (Figure 10). In the OLA survey, which listed a variety of employment scenarios, 43 percent of the workers reported they were employed, 37 percent reported they were unemployed and 20 percent said “none of the above.” Seventeen percent of the workers in the OLA settlement survey reported they had to resign from their job as part of the settlement agreement.

Figure 10 Percent employed at time of survey

Year of hearing or settlement	Hearing	Settlement
Total	50%	49%
2009	55%	52%
2010	52%	53%
2011	46%	44%

Workers who responded that they were employed were asked about how their current wage compares to their pre-injury wage. Forty-eight percent of the workers in the hearing group and 56 percent of the workers in the settlement group reported wages that were lower, often "much less," than their pre-injury wage (Figure 11). Among workers with settlements, the percentage reporting their current wage was similar to their pre-injury wage decreased with time from the settlement and was much lower among the cohort with settlements in 2009. One-third of the employed workers in the hearing group cohorts reported their current wage was similar to their pre-injury wage.

Figure 11 Current wage compared to pre-injury wage

	Hearing					Settlement				
Year of hearing or settlement	Much more	A little more	About the same	A little less	Much less	Much more	A little more	About the same	A little less	Much less
Total	8%	10%	33%	8%	40%	6%	11%	27%	16%	40%
2009	6%	22%	33%	6%	33%	10%	8%	18%	20%	43%
2010	12%	0%	33%	12%	44%	7%	17%	30%	15%	32%
2011	7%	16%	33%	7%	38%	2%	9%	32%	12%	46%

The two survey groups reported similar distributions of medical condition changes. The percentage reporting worsening conditions was markedly higher among the cohorts with the longest time since their resolution event (Figure 12). The percentage reporting no change in their medical condition decreased as the time from resolution increased. However, the percentage reporting improving medical condition was lowest among workers with the shortest time since their dispute resolution.

Figure 12 Change in medical condition

	Hearing			Settlement		
Year of hearing or settlement	Improved	No change	Gotten worse	Improved	No change	Gotten worse
Total	19%	36%	45%	14%	46%	41%
2009	23%	17%	60%	14%	33%	53%
2010	22%	37%	41%	20%	43%	38%
2011	16%	42%	43%	9%	57%	34%

Fairness

Workers with a hearing were more likely to consider the outcome of their process to be fair than were workers with a settlement; half the hearing group considering the judge's ruling fair while only one-fifth of the workers with a settlement reported their settlement to be a fair compromise (Figure 13). Among workers with a settlement, the percentage that was unsure of the fairness of the settlement decreased with time from the settlement, along with an increase in the percentage who considered the result unfair. Comparable results for settlements were found in the OLA survey, where 29 percent of the respondents said their settlement negotiations were fair and 19 percent agreed with the statement their lump-sum award was fair.

Figure 13 Fairness of judge's ruling or settlement compromise

	Hearing			Settlement		
Year of hearing or settlement	Yes	No	Not sure	Yes	No	Not sure
Total	50%	37%	13%	21%	54%	26%
2009	52%	35%	14%	22%	61%	17%
2010	49%	40%	10%	16%	55%	29%
2011	52%	35%	15%	24%	46%	30%

Comments about information needed, fairness and the dispute process

Because of the limited number of questions on the survey, workers comments provided a rich source of information to help understand their perspectives. (See Appendix A for a description of the comment categories.)

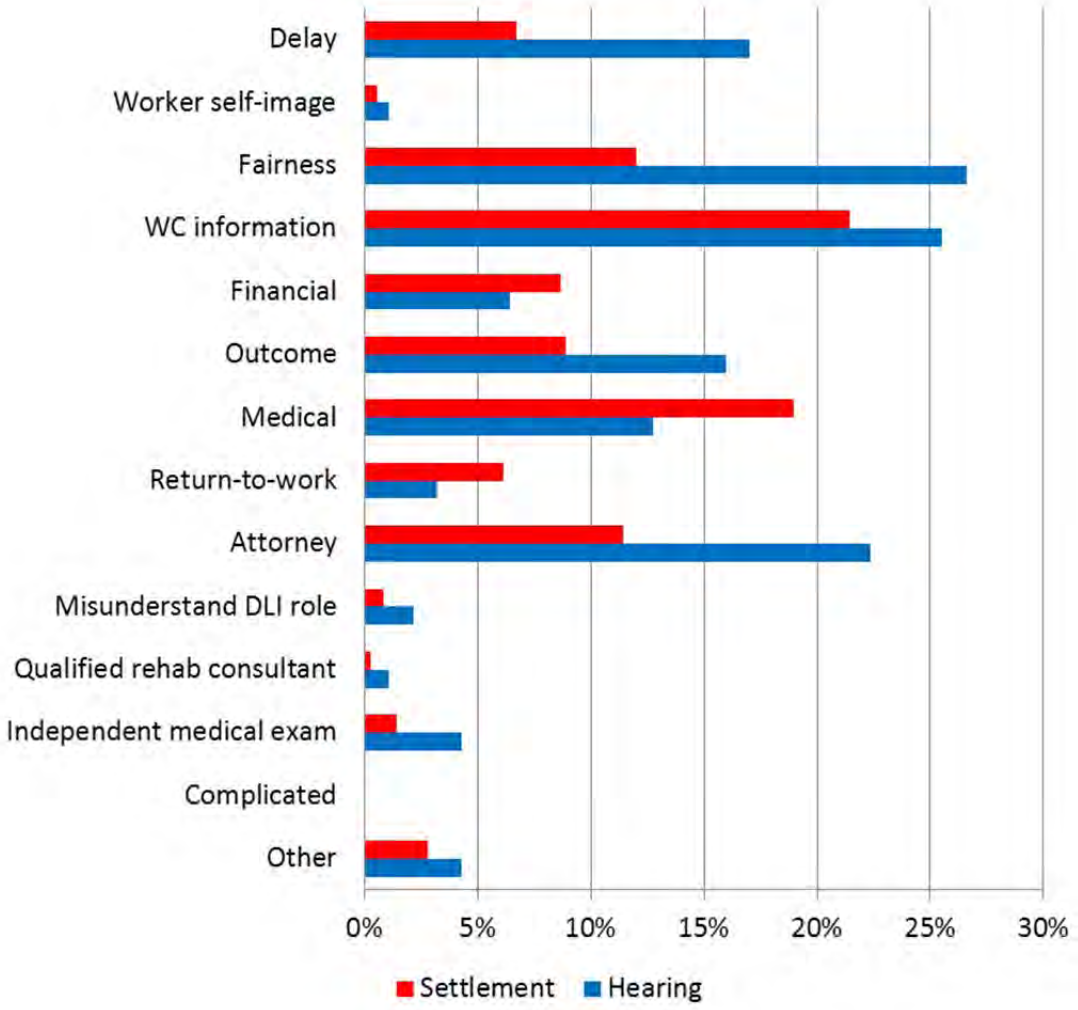
Settlement survey question 8, "What else would you like to have known before you agreed to a settlement?"
Hearing survey question 7, "What else would you like to have known before you went to trial?"

Nearly half of the settlement group provided responses to this question, as did 46 percent of the hearing group. Medical issues were nearly three times more likely to be cited by the settlement group as compared to the hearing group (Figure 14). This was expected because a findings-and-order does not close the worker's compensation claim and injured workers would consider their medical benefits open.

One-third of the settlement comments expressed concern with medical issues post-settlement, as shown by the examples in the box below.

> *That [the work comp insurer] would continue to deny their medical coverage or blame minor exacerbations on a new employer.*
>
> *That I would have to deal with pain the rest of my life. And it was worth so much more than what I got. I lost everything.*
>
> *My future medical benefits.*
>
> *Insurance company's ability to discontinue benefits at a later date. Future medical expenses.*

Figure 14 What workers would have liked to know



Return-to-work and employment issues were also mentioned more frequently by the settlement group than the hearing group. Some examples of these comments are shown in the box below:

> *Because they gave me less hours and later I did not have a job.*
>
> *I had a new boss at work who was trying to force my resignation. I value my job and didn't want to lose it, medically I was not feeling well and employer did not care.*
>
> *[The claim could be] settled only if I resigned my job.*
>
> *What [do] I need to do if my disability takes me away from the job I am trying to perform?*

Seventeen percent of hearing commentators cited the length of the process and 27 percent commented about fairness, both were more frequent than among the settlement group. The hearing

respondents who cited fairness or delay in their comments were uniformly dissatisfied, as exemplified by the comments below.

> *How many times can [the work comp insurer] take you to court and how many IMEs (can) they send you to?*
>
> *How long this process was going to take. And the extreme financial hardships I was forced to face.*
>
> *[I needed] someone that would [have] been in the middle to give me all the right answers on ways to go.*
>
> *How corrupt work comp is. I believed work comp was support to help [workers] injured and disabled in a work accident, not screw them over.*

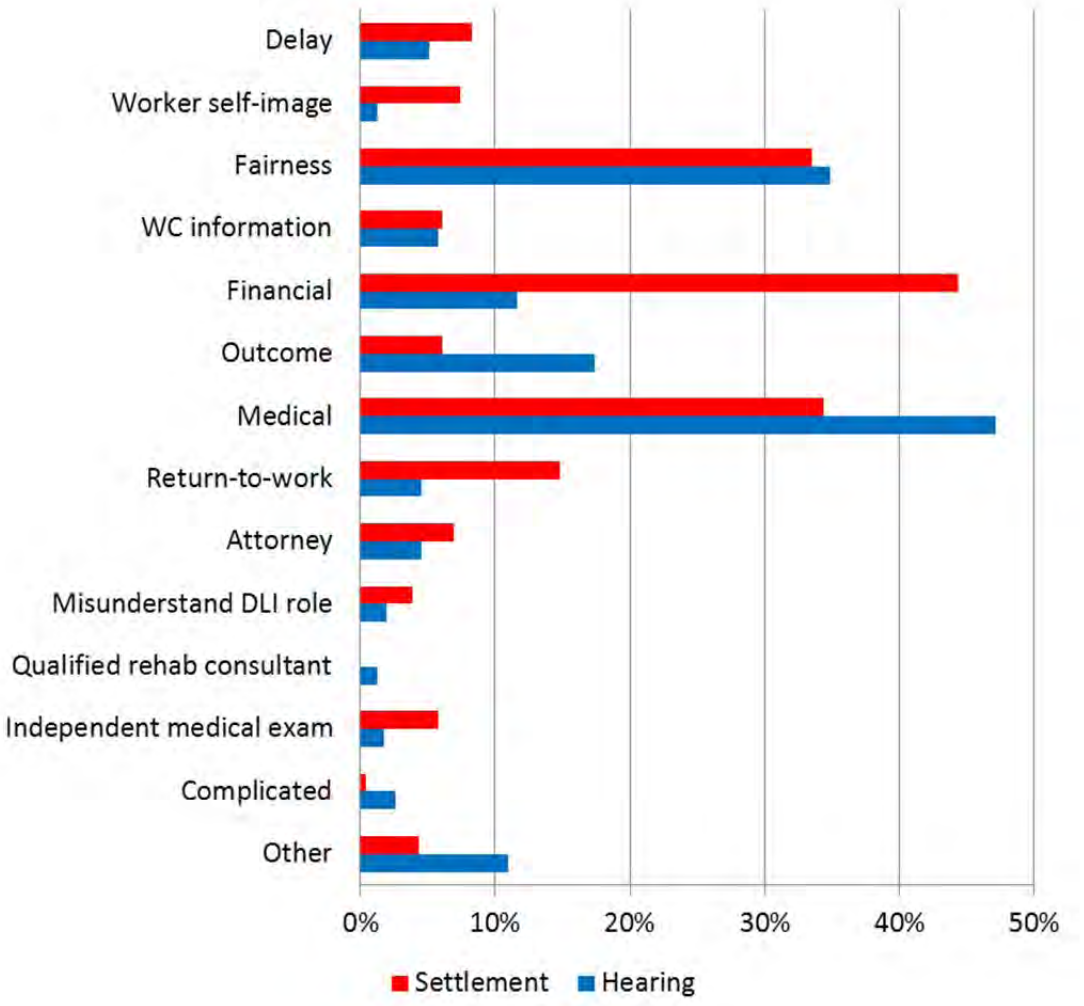
A few of the hearing respondents expressed surprise about details of the court process and the comments reflected a need for further education about dispute resolution. Two comments that stood out were, *"I didn't know workers comp was having the judge decide if I even had the illness from my injury until it was said to [the judge] at the trial. I was taken off guard and very nervous …"* and *"[I didn't know] that my attorney was not going to testify and I would have liked to be more prepared to testify."* The comments about the length of the process also showed the need for further information about the system, such as, *"[I would have liked to know] that it takes so long to get to see a judge ─ almost two years."*

Settlement survey question 11, "Do you think your settlement was a fair compromise?"
Hearing survey question 10, "Do you think the judge's ruling was fair?

Two-thirds of the settlement respondents and 76 percent of the hearing respondents provided explanations for their choices. Dissatisfaction was expressed in 76 percent of the settlement group's comments and in 52 percent of the hearing group's comments. Satisfaction was expressed in 34 percent of the hearing group's comments but in only 6 percent of the settlement group's comments.

The largest differences between the settlement and the hearing groups were for comments related to financial concerns and return to work (see Figure 15). Return-to-work issues were more than three times as likely to be cited in the settlement comments and financial issues almost four times as likely. Almost half the settlement group mentioned financial issues in their comments. The majority of the financial comments focused on inadequate compensation for their loss of earning potential. Some respondents believed their workers' compensation settlement should have compensated them for pain and suffering, even though pain and suffering are not considered in the calculation of workers' compensation benefits.

Figure 15 Comments about fairness of judge's ruling or settlement compromise



Many of the settlement respondents tied financial and return-to-work issues together or combined them with fairness. The three most common issues cited in the settlement comments were financial, 44 percent, medical, 34 percent, and fairness, 33 percent. Some example comments are shown in the next box.

I will have this pain and it will not be covered. [The settlement money] paid my bills and I don't have a job.

My injury ruined life as I used to enjoy it – I have constant pain – ruined my career – injury makes it impossible to earn a decent living.

Because I still have a problem with my injury. [The settlement amount is] not even close [to what I need], this is a life time injury.

Lost my [occupational] license after 27 years of work and still no work. No money, no income at all and I had surgery.

The outcome of the hearing was more than twice as likely to be mentioned by the hearing group compared with comments about the settlement outcome by the settlement group. Many hearing group comments expressed dissatisfaction with independent medical examinations. Some injured workers commented that they were disappointed in the aftermath of the hearing process.

> *The judge did not award ongoing benefits so I am still fighting the insurance company/former employer for said benefits.*
>
> *I won my case but my former company and their lawyers still haven't paid.*

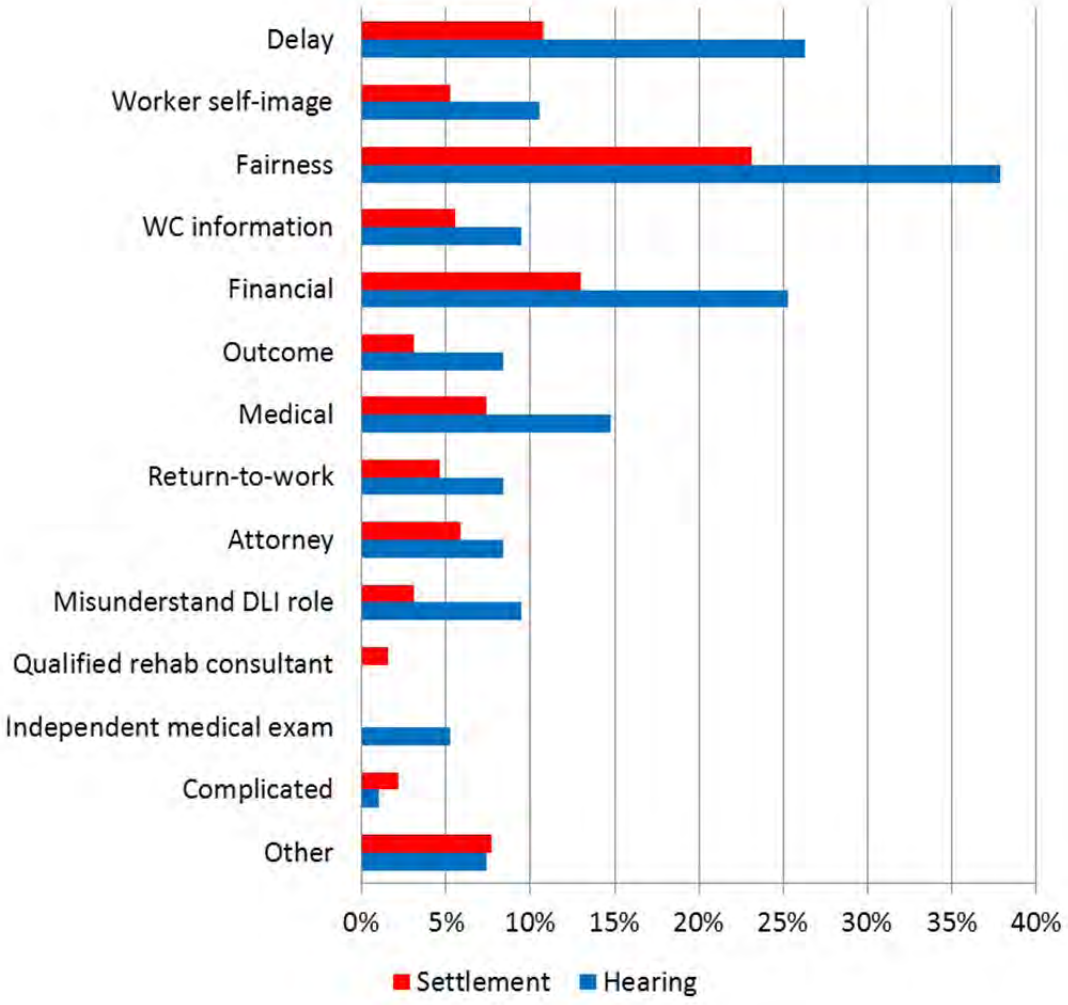
Settlement survey question 12 and Hearing survey question 11 "Do you have any other comments about how workers' comp handles disputes?"

Sixty-one percent of the settlement respondents and 47 percent of the hearing respondents provided comments about the dispute-resolution process (see Figure 16). Some workers also provided comments about the workers' compensation system as a whole. Seventy-five percent of the comments from the settlement group expressed dissatisfaction with the system, as did 84 percent of the comments from the hearing group.

For both groups, the most-cited topics in the comments were about delays in the process, financial issues, medical treatments and their attorneys. A couple of representative comments are shown below:

> *It takes too long, is too contentious, doesn't explain the process well enough. Settlement negotiations are handled poorly by [the insurer's] delay tactics, rude, insulting, disrespectful behavior.*
>
> *I was injured at work yet it was initially denied. My claim should have been settled upon initial request. It would have saved my workers comp a lot of money and me a lot of extra hassle.*

Figure 16 Comments about how the workers' compensation system handles disputes



Discussion[11]

This research study was designed to probe the extent of choice available to injured workers about how to resolve their claims disputes and to explore the range of workers' experiences with disputes settled either through a hearing or a settlement. The survey was conducted to provide the workers' perspectives to help DLI improve its administration of Minnesota's workers' compensation system. The survey results are based on the subjective reports by injured workers; no attempts were made to verify the accuracy of the information they provided. Also, insurers may have valid defenses to workers' claims to benefits.[12]

Taken as a whole, the survey results indicate a large percentage of injured workers with a settlement are concerned with the settlement process, with the fairness of the outcome, with their ability to

[11] Opinions expressed in the Discussion are the authors'; their publication does not imply endorsement by the Minnesota Department of Labor and Industry.
[12] The claim petition study by Berry (2010b) documents insurers' defenses.

work and with payment for their medical care. Many of the results of the OLA survey were replicated. Workers who received a hearing decision were less negative about their experiences, although workers in both groups raised many concerns with the dispute-resolution system.

The results also show injured workers' experiences and attitudes change with the length of time from the resolution of the dispute to the point of the survey. Workers' recollections of events change, memories fade and different aspects of the dispute-resolution process become more salient. The passage of time affects the status of workers' health and employment, and these also affect their attitudes about their experiences. In some cases, workers with an open claim after a hearing had additional disputes. Workers who found employment shortly after a settlement may become unemployed or under-employed after a year or two and attribute the change to their status as an injured worker.

The workers' comments covered a broad range of issues, including the dispute-resolution process, other features of the workers' compensation system and their own predicaments. While these comments represent only a portion of all injured workers, they generally reveal a strong dissatisfaction with how the workers' compensation system resolves claims disputes.

The most common themes in the comments were:

1. financial pressure, including the stoppage of weekly benefits, refusal to pay medical treatment or rehabilitation costs, refusal to pay job search costs, travel or mileage;
2. denial of medical treatment and rehabilitation services;
3. the length of the process, with some injured workers spending many months with no income while their case wound its way through the dispute system;
4. a lack of understanding of the claims or dispute-resolution process, often coupled with a misunderstanding of the state's role; and,
5. the fairness of a "government" system where insurers can bring pressures on injured workers.

Respondents also criticized how the workers' compensation system treats injured workers, commenting that employers and insurers delay the process to put financial pressure on workers, use workers' statements and information against them, and make workers feel at fault for their situation. A few workers commented at the unfairness of being injured and then having to fight for benefits provided by law.

Some of workers' concerns with the length of the dispute-resolution process were addressed by the Minnesota Legislature in 2011. Minnesota Statutes section 176.305 was amended to provide that a settlement conference must be held within 180 days after a claim petition and a hearing must be held within 90 days of the settlement conference. Continuances are disfavored and must be for good cause.

Do workers voluntarily choose to settle their claims?

The survey responses provide evidence that workers' were given a choice to resolve their dispute through a hearing (and have the dispute resolved through a findings-and-order) or a settlement. Among workers who had a hearing, 52 percent reported they were not offered a settlement, but 67 percent said their attorney had explained they had a choice to go to trial or to seek a settlement. Recall of attorney presentation of the choice to seek a settlement or go to a hearing was higher

among workers who settled their claim, with 80 percent reporting that their attorney explained the choice. A majority of workers in both groups said they talked with their attorney about their chances of winning at a trial.

Many of the workers who had a hearing saw the hearing as the best choice to procure their workers' compensation benefits. Workers who had a settlement said they opted for a settlement because the dispute was taking too much time and effort (to see it through to a findings-and-order). Compared to workers who had hearings, workers with a settlement reported feeling more pressure to settle, primarily from their own attorney and the insurer or employer.

While workers may have had a choice of whether to settle their claims, feelings of frustration with the length of the claim and the dispute-resolution process, financial pressure, medical necessity, the need for closure and outright pressure from their attorney and the insurer may have helped to tip the balance in favor of choosing a settlement. Additional research, perhaps involving in-depth worker interviews, will be needed to more fully explore how well-informed workers felt about the consequences of their decision and to what extent perceived pressure influenced their decision. A survey or interviews with worker attorneys should be considered.

Do workers have adequate information to make an informed decision, with full awareness of the consequences of their actions? Even if workers made a voluntary choice, if that choice was based on inadequate information, then the choice was not made with full awareness of the consequences of their decision. About half the respondents in each group reported they understood the benefits involved in their dispute "some" or "not at all." Adding to this lack of understanding, one-third of the workers with a settlement indicated they had, at most, "some" understanding of their settlement. Based on the survey results, a significant percentage of the workers may have needed additional information to make a fully informed choice.

Some workers commented that they needed to settle their cases, in part, because of financial pressures. Workers with significant financial hardship can request an expedited hearing that, if granted, would take place no later than 45 days after filing the request. Minnesota Statutes section 176.341, subdivision 6 lists the conditions for which an expedited hearing shall be granted:

> An employee may file a request for an expedited hearing which must be granted upon a showing of significant financial hardship. In determining whether a significant financial hardship exists, consideration shall be given to whether the employee is presently employed, the employee's income from all sources, the nature and extent of the employee's expenses and debts, whether the employee is the sole support of any dependents, whether either foreclosure of homestead property or repossession of necessary personal property is imminent, and any other matters which have a direct bearing on the employee's ability to provide food, clothing, and shelter for the employee and any dependents.
>
> A request for an expedited hearing must be accompanied by a sworn affidavit of the employee providing facts necessary to satisfy the criteria for a significant financial hardship. The request may be made at the time a claim petition is filed or any time thereafter. Unless the employer objects to the request in the answer to the claim petition or within 20 calendar days of the filing of a request made subsequent to the filing of the claim petition, the affidavit is a sufficient showing of significant financial hardship.

Workers' expectations

Some workers' comments indicated they may have had unrealistic expectations about the possible outcome of their hearing or the amount of their settlement. A few workers with a hearing expressed shock, anger and puzzlement that the workers' compensation judge would decide in favor of the employer/insurer. Some workers with a settlement may have expected they would be able to return to their pre-injury job after the settlement. Other workers may come to believe that continued receipt of benefits is a stumbling block to the employment relationship they wanted to restore. During the settlement negotiation process, some of these workers learned that, as part of the settlement compromise, they would not be able to return to their pre-injury employer or, if currently employed, they would have to resign.

The comments showed that some workers expected the settlement or hearing would end all contention with the insurer and, if medical benefits were left open, the insurer would agree to the future services. For some workers, the reality was that after the hearing or settlement, they were left with an impairment that could generate additional medical treatments (if the medical benefits were not closed out) which could generate new disputes, in addition to possible new disputes about indemnity and vocational rehabilitation benefits.

Over time, an increasing percentage of injured workers reported a worsening medical condition. If the level of permanent disability is measured at or near the date of maximum medical improvement, the level of impairment is the least the worker can expect to experience in the post-injury period. To the extent that the lump-sum settlement amount includes consideration for the level of permanent disability, workers may consider the compensation provided by the settlement to be inadequate for their ongoing condition.

Obligation to inform workers

The survey results underscore the need to provide workers with additional information about workers' compensation, in general, and about dispute resolution, in particular. Compared to most injured workers, the survey respondents were older, had longer job tenure, had higher wages and were more likely to be employed full time. If this group of workers had difficulties understanding Minnesota's workers' compensation system, how much more so for workers with lower wages (and probably fewer financial resources) and part-time workers? Education level data from vocational rehabilitation plans, available for 47 percent of the sampled workers, indicated 17 percent of the workers did not have a high school diploma or GED and 31 percent did not have education beyond a high school diploma or GED.

Ideally, all workers should receive information about the fundamentals of the workers' compensation system as part of their orientation to a new job and as a continuing part of job training and job safety training. It was apparent from comments that some workers thought the workers' compensation system was organized similar to the unemployment compensation system and they could not distinguish between the actions and responsibilities of the insurer and the state agency. Some workers used "workers' compensation" as a term to encompass the other parties and the state agencies, as if there was one entity controlling all the functions of the system. In their dispute, they were fighting "workers' compensation."

Even though workers' attorneys may inform their clients about their benefits and the dispute-resolution process, DLI has a statutory obligation to make information available to injured workers.

DLI mails a booklet explaining workers' compensation benefits to every injured worker with an indemnity claim, in compliance with Minnesota Statutes section 176.235, subdivision 1.[13] This brochure, which is also available online,[14] is often received months before the dispute-resolution process starts. The material needs to include additional information about the dispute-resolution process, as some workers commented they felt they were being given dates and times to appear without understanding the course of the process or how close they were to a resolution. The DLI website has a large amount of workers' compensation and dispute-resolution information,[15] but it needs to ensure this information is accessible and understandable.

Information about the results of disputes and the dispute process would help workers manage their expectations. DLI could provide information to workers about how long the process can last, the range of settlement amounts, the employment outcomes and the proportion of settlement awards given to attorneys and intervenors. Workers could benefit from additional information about what a settlement does and does not do, for example, what it means that medical care is being closed out.

Evaluating settlement outcomes

The OLA recommended DLI and OAH consider the "workers' best interests" when reviewing settlements. The "workers' best interests" is a very subjective term that has different dimensions and means different things to the different parties. For some workers, the closure of the claim and an end to its accompanying stress and uncertainty is an action in their best interest, although it may have only a short-term effect.

Implicit in the OLA recommendation is a notion that settlements should be fair to the injured worker. But what is the role of a state agency if the worker enters freely into a bargained agreement with full knowledge of its terms? On what grounds can the agreement be deemed unfair? If the worker is in dire financial circumstances, the insurer may use this knowledge to its advantage in bargaining terms less favorable to the worker than it would otherwise be able to obtain. However, if the settlement agreement is disapproved by the state agency, this may or may not benefit the worker, because the insurer may or may not offer more favorable terms. If more favorable terms are not offered, the worker is arguably made worse off because he or she can no longer settle on terms he or she had voluntarily agreed to. Tracking settlement terms to evaluate whether they are somehow appropriate would be operationally complex. In many of these disputes the parties disagree about primary liability, causation or some other issue affecting benefit eligibility. In such cases, the value of the claim cannot be objectively determined, so objectively evaluating the terms of the settlement relative to what is "fair" would be a challenge.

Considerations of fairness also involve the likelihood that the workers will be employed and their medical condition will not significantly deteriorate. The survey responses indicate that many workers remain unemployed or have periods of unemployment and, for many workers, their medical conditions are likely to become worse than at the time of the settlement. To the extent

[13] The statute reads: "When the commissioner of labor and industry has received notice or information that an employee has sustained an injury which may be compensable under this chapter, the commissioner of labor and industry shall mail a brochure, written in language easily readable and understandable by a person of average intelligence and education, to the employee explaining the rights and obligations of the employee, the assistance available to the employee, the operation of the workers' compensation system, and whatever other relevant information the commissioner of labor and industry deems necessary."
[14] www.dli.mn.gov/WC/EmpGuide.asp
[15] www.dli.mn.gov/WC/InjWorker.asp

settlement agreements may be based on assumptions that injured workers will maintain their level of physical functioning and be able to find permanent employment, settlement agreements often will not provide adequate resources to help these workers.

Attorney compensation

Some of the workers commented they had only minimal contact with their attorney or wished they had more time to talk with their attorney. This addresses the issue of whether there are incentives in the workers' compensation system that result in attorneys spending too little time with their clients. One line of reasoning is that Minnesota's attorney fee structure, which requires attorneys to petition for fees above $13,000 a claim and has not been increased since 1995, encourages attorneys to take on additional clients. Permitting attorneys to earn more money each claim, without needing to petition for additional fees, may allow attorneys to spend more time with each injured worker. The fee structure may affect attorneys' incentive to work for benefits beyond what they could receive without a petition. The attorney fee structure may also provide incentives for attorneys to press their clients to settle so the attorney may be paid through a lump-sum rather than through portions of periodic benefit checks. This position is reinforced by the workers' reports of feeling pressured to settle from their attorney. Consideration should be given to whether the attorney fee structure produces a "tilt" toward settlements that aren't in the workers' best interests. If statutory changes are made to reduce the prominence of settlements, the attorney fee payment system should be part of the considerations.

Services available for workers

In addition to the information posted on its website, DLI provides a range of services for workers involved in disputes, including workers with claims petitions filed at OAH.[16] The department's workers' compensation hotline assists about 15,000 callers annually. The hotline connects workers with dispute-resolution specialists (mediators) in DLI's Alternative Dispute Resolution unit who answer workers' questions, provide information and contact insurance claims adjusters to help resolve minor disputes. The hotline specialists include: lawyers, former insurance adjusters, nurses and vocational rehabilitation specialists. A Spanish-speaking mediator/arbitrator is available and language interpretation phone lines can be used. The goals of the mediators/arbitrators are to be neutral, yet helpful; to give advice about available options; and to explain rights and duties under the workers' compensation laws. Workers may also come to DLI offices in St. Paul and Duluth for an in-person visit and they may also send questions through letters and email messages.

DLI established the Office of Workers' Compensation Ombudsman in September 2011, to provide advice and assistance to employees and employers who need help understanding and navigating the workers' compensation system and to help resolve problems they encounter. Establishment of this office was encouraged by OLA, which recommended an ombudsman function to "help those injured workers who are overwhelmed with the workers' compensation process" (OLA, 2009, p. 66).

The department's Vocational Rehabilitation unit provides vocational rehabilitation services to injured workers whose claims have been denied by the employer/insurer. The legislative rationale for establishing this early vocational rehabilitation intervention is to provide needed vocational

[16] An overview and history of DLI's alternative dispute-resolution services was published in *Resolution ahead,* a special November 2011edition of *COMPACT*, www.dli.mn.gov/WC/Pdf/1111c_extra.pdf.

assistance to injured workers prior to, rather than after, a determination of liability by the courts. Although all eligible injured workers may receive vocational rehabilitation services from the Vocational Rehabilitation unit, the unit primarily serves claims where liability is denied by the insurer.

Conclusions[17]

The Office of the Legislative Auditor recommended an increase in state agency oversight of settlement outcomes. However, to comprehensively address the present situation, it is necessary to address the process that produces the settlement outcomes. At the start of the process is why a dispute occurs. Research by Roberts and Young (1997) shows that workers consider a variety of factors related to procedural fairness when deciding whether to seek redress from an insurer's actions. These factors include the perceived fairness of the claims process, the quality of the interactions with the claims adjuster, their attorney and medical providers, and the worker's opportunity to influence outcomes. Enhancing the information available to injured workers may affect workers' perceptions and the decisions they make about whether to engage an attorney.

The similarities of the experiences of the workers with hearings and with settlements provides evidence that placing emphasis on the settlement process as the most troubling aspect of Minnesota's workers' compensation system may be somewhat myopic. Both groups of workers surveyed in this research project had disputes with their insurers about a range of issues, including primary liability, degree of permanent disability, causation of conditions requiring treatment and whether maximum medical improvement had been reached. Attention should be given to the causes of disputes as much as to their outcomes.

Perhaps the most important finding of this research project is that injured workers, who directly experience the workers' compensation system, are very willing to provide feedback about their experiences, have many insights to share and want to improve the system so other workers have better experiences. The primary purpose of this report was to present workers' views about what was, for many workers, a pivotal experience in their working life. Program administrators and researchers need to become sensitized to workers' experience of system outcomes. Claims closures end the involvement of state agencies and insurers, but for many workers, the effects of their injuries and illnesses continue for years thereafter.

Researchers' recommendations

While the workers' responses reinforce OLA's call for DLI (and OAH) to create a process to ensure settlements are in the workers' best interests, consideration should be given to addressing the incentives for the parties at the front end that could stem the flow of claims into the settlement process. Based on the survey responses, the workers' experiences and the sentiments they have expressed, the researchers recommend the following list of actions for consideration by DLI to improve workers' experiences and outcomes as their claims disputes are processed and resolved.

1. Consideration should be given to providing workers with additional information about the dispute-resolution process and outcomes. Injured workers need accessible, accurate, timely and

[17] Opinions expressed in the Conclusions are the authors'; their publication does not imply endorsement by the Minnesota Department of Labor and Industry.

impartial information to help them make decisions, have realistic expectations and feel involved in the dispute-resolution process. Information could be mailed to workers when a claim petition is filed.

2. Consideration should be given to changing the attorney fee structure to ensure claimant attorney incentives are properly aligned with the interests of their clients. In particular, attention should be paid to whether the current structure unduly rewards attorneys when claims are settled.

3. On the basis of workers' comments expressing dissatisfaction with the length of the dispute-resolution process, consideration should be given to making administrative changes to ensure all disputes receive timely action. Consideration should be given to a fast-track system for primary liability hearings, such as is done for discontinuance conferences, so payments to injured workers can be decided promptly and the healing process can begin.

4. On the basis of workers' comments expressing concern for their employment status and future medical treatment, and the large percentage of the workers who indicated their medical condition was worse than at the time of the settlement, consideration should be given to the question of whether to approve settlements that close out vocational rehabilitation and future medical benefits.

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Appendix A

Survey Methodology

Development of survey questions

Development of the survey questions started in June 2011 and the surveys were finalized in February 2012. This involved a task force of seven people, members of the Research and Statistics, Alternative Dispute Resolution and Compliance, Records and Training units. This task group discussed how to address the questions raised by the Office of the Legislative Auditor's (OLA's) recommendation, taking a pool of self-generated questions and OLA's survey as starting points. The focus of the DLI survey questions was the worker's voluntary decision-making to pursue a settlement and whether the worker had an adequate understanding of the workers' compensation benefits involved and the dispute-resolution system. The survey also provided opportunities for workers to express their opinions and comments about their experiences and about the dispute-resolution process. Draft surveys were distributed to members of the Workers' Compensation Advisory Council and the Rehabilitation Review Panel for additional input. When possible, the survey developers used the same language as used by OLA. In the surveys, the more common term "trial" was used instead of the technical term "hearing."

A near-final version of the questions was mailed in late January 2012 as a pilot survey to 100 workers with settlements of at least $5,000 received during January or February 2011. The minimum settlement amount was selected to eliminate claims with partial settlements from the pilot. The purpose of the pilot was to check that workers understood the questions, that the multiple choices offered covered the range of likely answers, and that workers were willing to complete and return the survey. Of the 100 surveys that were mailed, 20 surveys were returned because of incorrect addresses and 29 completed surveys were returned. The pilot survey responses were studied and the surveys were revised.

The Management Analysis and Development (MAD) division at Minnesota Management and Budget was contracted in January 2012 to mail the surveys and collect the responses. Their lead worker on this project met with the DLI researchers to make final revisions to the surveys to fit them onto one sheet of legal-sized paper. The final surveys were translated into Spanish by native-Spanish speakers in the DLI Alternative Dispute Resolution unit. One person made a draft translation and this was reviewed and edited by the second person. MAD also prepared online versions of the surveys. The final versions of the surveys are presented in Appendix B.

Categorization of comments

Generally, comments were attached to one of four questions on the forms: questions 1, 7, 10 and 11 on the hearing survey; and questions 1, 8, 11 and 12 on the settlement survey. In some cases, respondents wrote wherever there was space on the form or attached additional pages. These comments were classified according to subject relevance or proximity.

Each of the respondents' comments was coded independently into a set of 14 categories; multiple categories for a single comment were possible.

1. Delay or length of the process

2. Worker self-image (e.g., worker felt insulted or disrespected)
3. The fairness of the process or the injured worker's perception of fairness
4. Information needed about benefits or the dispute-resolution process
5. Financial pressure or hardship
6. Outcome of process (e.g., results of the hearing or the settlement agreement)
7. Medical issues (lack of, type of or availability of medical services)
8. Return to work, issues with post-injury employment
9. Worker's attorney
10. Misunderstanding DLI role in the workers' compensation system
11. Qualified rehabilitation consultant (QRC), a provider of vocational rehabilitation services
12. Independent medical examination (IME)
13. Complex claim, a catch-all categorization for those cases with multiple employers or insurers, numerous injuries, or combined claims that were apparent in the comment
14. Other

The comments on the last two questions on each survey, concerning fairness of the settlement compromise or the judge's decision and other comments about the workers' compensation dispute-resolution system, were also coded about whether they expressed satisfaction or positive affect, dissatisfaction or negative affect, or neither in regard to the category. For example, satisfaction/positive affect would be inferred from "The state agency was very helpful"; while dissatisfaction/negative affect would be inferred from "The state agency was not very helpful."

Survey mailing and data collection

The hearing and settlement surveys were printed on legal-sized paper, with English on one side and Spanish on the other. Cover letters, in English and Spanish, for each group, with the commissioner's signature, explained this was a voluntary survey, their responses would not affect their workers' compensation benefits or claims status, and their identities and responses would be protected as private state data. Each survey was assigned a code number to enable tracking of the returns and to allow matching to the workers' compensation claims files.

The surveys were initially mailed in March 2012, with a reminder letter two weeks later, followed by a reminder postcard the next week and a final reminder letter two weeks later.

Following the initial mailing, undeliverable surveys with forwarding addresses were re-sent. Resending of undeliverable surveys without forwarding addresses was attempted if a different address was available on an imaged workers' compensation claims file document. An additional 100 randomly selected settlement cases were added to the mailing list for the second mailing to ensure an adequate number of surveys would reach injured workers. (These additional cases are included in the count of 1,061 settlement cases.)

MAD received the completed surveys and input the responses. Comments written in Spanish were translated by MAD prior to data entry.

Appendix B

Survey questions

The surveys were printed on legal-sized sheets of paper, with the English version on one side and the Spanish version on the other side.

Workers' Compensation Settlement Survey

(1) Why did you settle your claim? *(Please check all that apply.)*

□ I was afraid I might lose at a trial.
□ The dispute was taking too much time and effort.
□ I needed the money quickly.
□ I thought it would be a fair way to end the dispute.
□ I thought it was the best way to get my benefits.
□ Other (specify) _____

(2) Did your attorney explain that you had a choice to go to trial or seek a settlement?

□ Yes □ No □ Don't remember

(3) Did you feel any pressure to settle your claim or go to trial?

□ Yes □ No □ Don't remember

If "Yes," how much pressure did you feel from:		Pressure to SETTLE			Pressure to GO to TRIAL		
		None	Some	A lot	None	Some	A lot
a.	Your employer						
b.	Workers' comp insurer						
c.	Your attorney						
d.	Your family						
e.	Medical or rehab providers						

(4) When you settled your claim, how well did you understand the cash benefits, medical services and vocational rehabilitation services you might have won in a trial?

□ Very well □ Mostly □ Some □ Not at all □ Don't remember

(5) Before you settled your claim, did your attorney talk about your chances of winning if you went to trial?

□ Yes □ No □ Don't remember

(6) When you settled your claim, how well did you understand what your settlement said?

□ Very well □ Mostly □ Some □ Not at all □ Don't remember

(7) If you were doing it all over, would you settle your claim or go to trial?

□ Settle □ Go to trial □ Not sure

(8) What else would you like to have known before you agreed to a settlement?

(9) Are you employed right now?

□ Yes □ No

If "Yes," how does your current pay compare to your pre-injury pay?

□ Much more □ A little more □ About the same □ A little less □ Much less

(10) How has your medical condition related to your injury changed since your settlement?

□ Improved □ No change □ Gotten worse

(11) Do you think your settlement was a fair compromise?

□ Yes □ No □ Not sure

Please explain your answer:

(12) Do you have any other comments about how the workers' comp system handles disputes?

Workers' Compensation Hearings Survey

(1) Why did you go to trial instead of settling your claim? *(Please check all that apply.)*

□ I was not offered a settlement.
□ The settlement offered was not good enough.
□ I thought I had a good chance to win at a trial.
□ I wanted my case to be heard.
□ I thought it would be a fair way to end the dispute.
□ I thought it was the best way to get my benefits.
□ Other (specify) _____

(2) Did your attorney explain that you had a choice to go to trial or seek a settlement?

□ Yes □ No □ Don't remember

(3) Did you feel any pressure to settle your claim or go to trial?

□ Yes □ No □ Don't remember

If "Yes," how much pressure did you feel from:		Pressure to SETTLE			Pressure to GO to TRIAL		
		None	Some	A lot	None	Some	A lot
a.	Your employer						
b.	Workers' comp insurer						
c.	Your attorney						
d.	Your family						
e.	Medical or rehab providers						

(4) Before you went to trial, how well did you understand the cash benefits, medical services and vocational rehabilitation services you might win at a trial?

□ Very well □ Mostly □ Some □ Not at all □ Don't remember

(5) Before you went to trial, did your attorney talk about your chances of winning at a trial?

□ Yes □ No □ Don't remember

(6) If you were doing it all over, would you settle your claim or go to trial?

□ Settle □ Go to trial □ I was not offered a settlement □ Not sure

(7) What else would you like to have known before you went to trial?

(8) Are you employed right now?

□ Yes □ No

If "Yes," how does your current pay compare to your pre-injury pay?

□ Much more □ A little more □ About the same □ A little less □ Much less

(9) How has your medical condition related to your injury changed since your trial?

□ Improved □ No change □ Gotten worse

(10) Do you think the judge's ruling was fair?

□ Yes □ No □ Not sure

Please explain your answer:

(11) Do you have any other comments about how the workers' comp system handles disputes?

Appendix C

Comparison of demographic and claim characteristics

The injured workers who responded to the survey and their workers' compensation claims are different, in many respects, to other groups of workers with workers' compensation claims. Many of these differences may be the result of the type and severity of the injury and the extended duration of the claims, which are inter-twined with the existence of the dispute. Many of the respondents' claims were in dispute from their inception; about one-quarter of the settlement disputes and one-third of the hearings disputes involved a denial of primary liability.

Figure C1 compares characteristics of the hearing and settlement survey samples, showing the total sample and, separately, respondents and nonrespondents, with all indemnity claims closed during 2008 through 2010 and with those indemnity claims that involved payment of attorney fees, indicating dispute-resolution activity. All dollar values were adjusted to 2011 wage levels.

The comparisons show the following.

- The survey samples had a lower percentage of male workers, with the lowest percentage for settlement respondents.
- Survey respondents were older than workers in the all claims, claims with attorney fees and nonrespondent groups.
- Survey respondents had longer job tenures than workers in the all claims, claims with attorney fees and nonrespondent groups.
- Claims durations for the survey samples were longer than durations for all indemnity claims and claims with attorney fees.
- Survey respondents tended to have higher wages than other groups.
- Mean indemnity payments for the samples were slightly below the mean for all claims with attorney fees.
- The mean value of lump-sums, among workers receiving any lump-sum payment, was slightly lower for the survey respondents compared to nonrespondents and claims with attorney fees.
- The mean value of attorney fees for the survey samples was less than the mean for all claims with attorney fees.
- The survey samples had a much higher proportion of claims with a primary liability denial.
- Medical-only claims accounted for nearly one-third of the hearings claims.
- About three-fourths of all indemnity claims were not denied and have benefits paid without a lump-sum.
- The majority of indemnity claims with attorney fees, with and without a denial of primary liability, were paid both weekly benefits and a lump-sum payment.
- The largest categories of indemnity hearings claims, for those with and those without a denial of primary liability, were paid weekly benefits and no lump-sum payment.
- Most of the settlement claims that were not involved in primary liability disputes received both regular indemnity benefits and a lump-sum payment.

- Most of the settlement claims that were involved in primary liability disputes received only a lump-sum payment.

Figure C1 Comparison of characteristics for general claims and survey groups

	Closed indemnity claims 2008-2010[1]		Hearings			Settlements		
	All claims	attorney fees	Total sample[2]	Respondents	Nonrespon-dents	Total sample[2]	Respondents	Nonrespon-dents
Number of claims	68,983	16,126	536	204	273	1,061	323	589
Percent male	62%	62%	58%	58%	58%	56%	53%	58%
Mean age (years)	43.1	43.7	44.5	49.5	41.5	43.1	48.0	41.3
Mean job tenure (years)	7.1	5.4	6.6	9.6	5.2	5.6	8.2	4.9
Mean claim duration (years)	1.0	2.5	3.2	3.2	3.1	2.9	3.3	2.8
Mean wage	$ 730	$ 710	$ 750	$ 810	$ 720	$ 670	$ 750	$ 670
Mean indemnity paid (if > $0)	$ 15,030	$ 49,560	$ 39,520	$ 41,470	$ 39,620	$ 43,240	$ 45,460	$ 44,390
Mean lump-sum payment (if > $0)	$ 35,560	$ 35,570	$ 33,480	$ 29,940	$ 35,280	$ 32,060	$ 31,060	$ 33,840
Mean attorney fees (includes $0)	$ 1,750	$ 7,490	$ 5,420	$ 5,470	$ 5,660	$ 6,600	$ 6,210	$ 6,800
Percent with primary denial	7%	23%	31%	34%	28%	24%	23%	21%
Claim denial/payment status[3]								
denied, paid medical only	0.0%	0.0%	13.6%	14.2%	12.1%	0.8%	0.6%	0.8%
denied, not paid	0.2%	0.0%	0.2%	0.0%	0.4%	0.1%	0.0%	0.2%
denied, paid weekly only	1.4%	1.0%	8.4%	9.3%	8.4%	0.3%	0.0%	0.3%
denied, paid weeky, lump-sum	1.3%	5.7%	5.0%	5.9%	4.0%	4.0%	5.3%	2.7%
denied, lump-sum only	3.8%	16.4%	3.4%	4.9%	2.9%	18.3%	17.3%	17.1%
not denied, paid medical only	0.0%	0.0%	17.2%	16.2%	16.8%	7.3%	7.7%	7.6%
not denied, not paid	0.4%	0.0%	0.4%	1.0%	0.0%	0.0%	0.0%	0.0%
not denied, paid weekly only	76.5%	7.2%	35.4%	33.3%	35.9%	4.5%	4.3%	4.9%
not denied, paid weekly, lump-sum	11.9%	51.1%	13.6%	12.7%	16.5%	43.0%	45.2%	42.8%
not denied, lump-sum only	4.4%	18.7%	2.8%	2.5%	2.9%	21.8%	19.5%	23.4%

1. Indemnity claims with date of injury or illness in 2003 through 2010, closed during 2008 through 2010 .
2. Total sample includes respondents, nonrespondents and workers with undeliverable surveys.
3. "Denied" refers to whether a denial of primary liability was filed. "Paid weekly" refers to receipt of indemnity benefits other than a lump-sum payment.