

*I describe the worst healthcare delivery structure at the end of this chapter.*

The US workers compensation (WC) system was based on well-meaning ideas, but it has developed into a mess. The original plan from the early twentieth century and before was meant to streamline companies' payment for work-related injuries, avoid delays, and decrease conflict. It was to benefit both the worker and the employer. The system paid for medical expenses and lost wages. Payment schedules codified compensation for various accidents, such as amputations and even death. "Pain and suffering" or "non-economic damages" were not compensable. This simplified a poorly quantifiable area.

Although there are federal guidelines, each state developed a separate undergrowth of laws and idiosyncrasies. In 2017, workers compensation covered 140 million US jobs and 42 percent of the population. About 80 percent of the WC obligations are passed through insurance companies, and the client corporations retain the rest of the risk.

In 2017, employers' costs for workers compensation, according to the National Academy of Social Insurance, were \$97.4 billion, and the benefits paid were \$62 billion, which is 64 percent of the total. Insurance company profit, overhead, and administration are the rest—a calamitous 36 percent. Recall that other types of insurance may have total costs of up to 25-30 percent. If this were the only outlay needed to supervise the system, it would about match the rest of healthcare. But there are many others.

A second expense layer is the contingency-fee lawyers. They get involved with 28 percent of cases nationwide and take a percentage of any award. Litigation has derailed the WC system: a study of closed cases from 2007 to 2017 in 46 states from one insurer found:

- ✪ Litigation increased claims expenses nearly four times
- ✪ Final awards for litigated cases were seven times higher
- ✪ Lost work time nearly tripled in lawyer-assisted cases
- ✪ Average claim duration with attorneys was 901 days
- ✪ Average claim duration without attorneys was 305 days
- ✪ California claim duration with attorneys was 1139 days

Attorneys get used more often in the lost time and permanent disability cases, the big ones, so the above effects may not be entirely because of the lawyers.

Frauds are ubiquitous in workers compensation. For the claimants, these include faked or exaggerated claims, off-the-job injury claims (not insured), and claims of disability continuing after actual recovery. The employers also sometimes cheat. For example, they may withhold payments to the insurer in various ways. Doctors may exaggerate or fabricate bills, treatments, or diagnoses. The lawyers may coach them on how to fool the system to get the most money out of it.

Estimates of the fraudulent WC claims for the United States range up to \$30 billion a year (2018). This is 48 percent of the \$62 billion that made it past the insurance layer. Besides the expense, all that graft creates a climate of distrust, which destroys patient care and breeds more litigation.

A guess at total costs follows. Cut this speculative 48 percent fraud in half and add it to the well-documented overhead consumed by insurance administration, 36 percent. Combine this with another (conservative) 5 percent spent on attorneys and litigation. Providers, who have to manage payment delays lasting two or more years, have billing and other costs that must be over 10 percent. The total—an educated guess for the system’s expenses—is 75 percent. Whatever the actual amount is, it departs the system before care is given to the first patient.

### **US WORKERS COMPENSATION COSTS (2017)**

**US employers’ cost for WC in 2013: 97.4 bn**

**Total US benefits paid by insurance: 62.0 bn 64%**

### **AN EDUCATED GUESS AT THE OVERHEAD:**

**Expense of ins. co. administration (above): 36%**

**Rough fraud losses (using lower figure): 24-48%**

**Estimate of litigation costs (conservative): 5%**

**Provider overhead costs (conservative): 10%**

### **TOTAL OVERHEAD COULD BE AS HIGH AS 75%**

There is worse news: patient outcomes in the workers compensation system are inferior to those using ordinary insurance. WC patients take longer on average to return to their jobs and have more extended disabilities and a higher percentage of permanent disability.

A senior expert witness, whom I will call Albert, has been observing the scene in California for 30 years. He says the insurance industry would rather spend more money on litigation than to recognize disability and fund timely care. Many cases are held up for years, which can be disastrous for those with genuine health issues. He says that even though this delay runs up the ultimate cost of settlement, when the companies keep the money longer, they make more overall because they invest the withheld cash and have high returns.

Just like the other players, Albert works the system. He has forty employees and contractors, and bills the WC insurance companies at his lucrative physician’s rate for some work his employees do. He told me this is a “grey area.” His income is \$2 million a year, he works 20 hours a week, and he requested anonymity.

These financial gains for lawyers, doctors, and patients divert everyone’s focus away from the simple goal of making people well.

**Personal injury (PI) lawsuits have their uses, but as a healthcare delivery system, they are disastrous.** Here is the basic version of how it works. To

start, some injury is necessary. This can be for anything from an auto accident, to medical malpractice, to chronic asbestos exposure. The injured person finds a lawyer, or the lawyer finds them, which is illegal (this is “ambulance chasing”). If there is a wrong or negligence involved with the injury—which means someone is to blame—and they have money or insurance coverage, the attorney sues.

To treat the injury or condition, the lawyers refer patients to doctors specializing in PI. These physicians do their work on a lien, which means they assume all costs and get paid years later when the case gets resolved.

The settlements for PI are traditionally three times the doctors’ bill. The doctor gets a third; the attorney gets a third, and the patient-plaintiff gets a third. This encourages physicians to run up their charges to produce a bigger award. Patients may also exaggerate, especially in subjective areas such as emotional injuries. I had coaching about all this from a lawyer when I handled a few personal injury cases early in my career.

In these situations, many physicians charge stunning fees, and they may entirely invent care. A Los Angeles anesthesia provider told me that the orthopedists in his operating room routinely bill \$500,000 (a half-million dollars) for a single PI spinal fusion surgery that takes an afternoon to complete. True, they have to fight for their money years later when the bills get negotiated, but this is the starting figure.

Recall that these surgeries have no scientific support. On average, they do not help pain or decrease disability. Some speculate that the operations increase chronicity and long-term pain.

PI has even more fraud than WC. For example, there are many reports of cars full of volunteers, often impoverished migrants, purposefully staging collisions with well-insured commercial truckers. This dangerous scam would never get orchestrated if it did not have substantial financial rewards for everyone involved. The stories about personal injury rackets seem endless. *Accidentally, On Purpose: The Making of a Personal Injury Underworld in America (1996)*.

**WC does not function precisely like PI.** Still, there is a relationship between settlement size, doctors’ charges, lawyers’ charges, and the documented extent of the injury. This creates incentives to delay and exaggerate everything. Resources are wasted, fraud multiplies the expenses, and the result is degraded care. It is the same triad as the rest of American medicine: loose money, corruption, and then poor-quality healthcare.

### **PATIENT TIPS TO BEAT WORKERS’ COMPENSATION**

As you have learned, even for on-the-job injuries, your employer’s ordinary health insurance might do the best job with the least downtime and hassle. But enormous posters in the employee lunchroom advise you to “preserve your rights” by filling out all the paperwork and jumping into the claims process.

Despite the problems with workers' compensation, putting job-related healthcare issues through the system is, unfortunately, preferable. There is no limit on coverage, and unlike regular insurance, the company cannot cancel the policy. Providers will always ask you if your issue is work-related, and you would have to lie to them if you do not want to go through work comp. Also, insurance companies try to wiggle out of responsibility for anything they can. If they find out later that your problem is a job injury, they may try to reverse the payments.

Despite all this, using the health insurance plan might sometimes save time and hassles. It is also cheaper for the employer. I cannot formally recommend this, and if you do it, be careful. Note also that if you file for workers' compensation and get denied, the insurance plan will take care of you.

Providers like Kaiser Permanente use both types of payment, and the treatment is identical. The workers' compensation cases pay better, so the Kaiser people will fill out the paperwork for you.