



THE DEMISE OF THE GRAND BARGAIN **Compensation for Injured Workers in the 21st Century**

An Academic Symposium Cosponsored by

**Pound Civil Justice Institute
Rutgers Center for Risk and Responsibility
Northeastern University School of Law**

**September 23, 2016, 9:00 am – 4:00 pm
Rutgers Law School, Camden, New Jersey**

Papers to be published in the *Rutgers University Law Review*.

Workers' compensation systems arose as one of the great political compromises of the Progressive Era: workers injured on the job gave up the right to sue their employers for personal injury damages in return for less generous but more certain benefits. This exchange became known as The Grand Bargain.

This bargain has survived over the ensuing century despite frequent political battles in the states, often fought below the national radar screen. Over the past 25 years, the attacks on these systems have escalated. Most recently, a politically powerful coalition has proposed further constraints on benefits through implementation of "opt-out" systems, which allow employers to substitute self-designed and self-implemented programs for the traditional statutory system. Remedies have become so constricted in some states that courts have questioned whether a quid pro quo still supports the Grand Bargain.

This conference will re-examine The Grand Bargain in light of evolving legal doctrine, a changed labor market, and changing politics. How well is the workers' compensation system serving its original purposes of swift, sure, and efficient remedies? Does an employer-based insurance scheme for workplace injuries supplanting tort remedies remain desirable? How does the common law command of a remedy for every legal wrong affect the architecture of workers' compensation systems? What responsibilities should employers and employees bear in this system? What are the ramifications of a move towards universal health insurance? Responses to these questions can inform debates occurring now in courts and legislatures across America. ** See below for panels, paper writers and discussants.*

About the Symposium

The Demise of the Grand Bargain is a one-day educational program open to attorneys, judges, law clerks, law professors and students, public policy professionals, advocates and public officials. Registration is required and will open June 6, 2016. A hotel room block will be available for those needing lodging. CLE accreditation for New Jersey, Pennsylvania, and New York is expected.

For more information or to register, contact:

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AGENDA as of 5/17/16

PANEL I: The Challenges of the Changing Legal Structure of Workers' Compensation and the Changing Workforce

Paper writer: Emily A. Spieler, Northeastern University School of Law

This panel will provide both a historical and legal overview of the developments that we are confronting today in workers' compensation systems, as well as a review of the legal structures that are designed to provide remedies for workplace injury and illness. The panel will provide a framework for the ensuing discussions, including a look at the various economic, political and social forces that shape the debates.

PANEL II: The Economics of Workers' Compensation and the Changing Insurance Market: Who Are the Winners and the Losers in the Evolving Terrain?

Paper writer: Alison D. Morantz, Stanford Law School

Changes in the law and politics in the states mean that the costs and benefits of The Grand Bargain may be shifting. How adequate have workers' compensation benefits been? To what extent are costs externalized to other programs—or to workers and their families? Is this a growing trend? What does this mean for insurance and the distribution of risk? This panel will include a review of the evidence regarding externalization of costs to SSDI, LTD & STD systems; the effect of the Affordable Care Act on medical care benefits; and the effects of "opt-out" on the distribution of these costs.

PANEL III: Workplace Injuries as a Constitutional Law Issue

Paper writer: Robert F. Williams, Rutgers Law School

Early workers' compensation systems faced constitutional challenges and often required amendments to state constitutions. Once workers' compensation was authorized in state constitutions, the resulting statutory enactments needed to fit within the terms of the constitutional authorization. As a consequence, there has been a line of state constitutional cases over the years that define the contours and parameters of state legislation on workers' compensation within the specific constitutional provisions. Furthermore, some of the state constitutional provisions have been amended over the years. As the systems have evolved, new constitutional issues are presented. The panel will review and analyze these developments, seeking to identify common themes throughout the states with regard to the state constitutional law of workers' compensation.

PANEL IV: Alternative Structures for Addressing Workplace Injuries: Tort Law and Beyond

Paper writers: Robert L. Rabin, Stanford Law School
Adam Scales, Rutgers Law School

In tort law itself, how has the law developed to provide alternative remedies for workplace injuries? What doctrinal changes would create a better common law response to workplace injuries? More broadly, what structures other than traditional workers' compensation systems or tort litigation might better serve the objectives of prompt and effective compensation for workers and safety incentives for employers? Are other compensation schemes or insurance programs realistic and desirable alternatives?

Confirmed discussants to date:

- Leslie I. Boden, Boston University School of Public Health
- John F. Burton, Jr., Rutgers School of Management and Labor Relations (emeritus)
- George W. Conk, Fordham University School of Law
- Charles R. Davoli, practitioner; Workers' Injury Law & Advocacy Group
- Michael C. Duff, University of Wyoming College of Law
- Price V. Fishback, University of Arizona, Department of Economics
- James Lynch, Chief Actuary, Insurance Information Institute
- Robert T. Reville, President & CEO, Praedicat, Inc.
- Hon. David B. Torrey, Workers' Compensation Judge, Commonwealth of Pennsylvania