amelioration of social and economic injustice. Moreover, some lawyers had been introduced to this work through their service for unions or legal aid societies and had become fascinated with it, or had been type-cast to continue the work for which their previous experience peculiarly fitted them.

Whatever the reasons, a plaintiffs' bar did spring up and, once in existence, grew rapidly in numbers and influence. Later, in the 1940's, Samuel Horovitz's book on workmen's compensation,[21] scholarly and well-documented, was in effect the "cry to battle" for the furtherance of the rights of the injured worker. In 1946, at the Portland, Oregon, convention of the International Association of Industrial Accident Boards and Commissions, a handful of members of the new plaintiffs' bar founded their own association, the National Association of Claimants' Compensation Attorneys, which came to be known simply as "NACCA." Two years later the *NACCA Law Journal* began publication. This became both the voice of the plaintiffs' bar and its internal system of communication. Through it the representatives of injured workers, not only in the workmen's compensation field, but also in the fields of railroad and admiralty law—and later in tort law generally as well—were able to exchange ideas and to keep up with the latest decisions and other developments of importance to their professional work.[22]

From the beginning, this plaintiffs' bar group has been a partisan one, dedicated to advocating the rights of the injured, especially injured workers. In the compensation field, it has sought to establish broader and more reasonable definitions of personal injury or accidental injury, to extend the scope of the employment covered, to eliminate extraneous fault elements (such as assault, horseplay and "willful misconduct") from the system, and to controvert the employers' assumed right to determine medical bases of causation and disability through company doctors or experts for hire.[23]

21 HOROVITZ, WORKMEN'S COMPENSATION (1944).

22 For a discussion of the history and aims of NACCA, see SOMERS 180-82; Lambert, *NACCA-Rumor and Reflection*, 18 NACCA L.J. 24 (1956). See also Green, *The Thrust of Tort Law: Part 1, The Influence of Environment*, 64 W. VA. L. REV. 1 (1961), stating that: "The National Association of Claimants' Counsel of America has tremendously broadened the understanding of the profession, including the judges, of the significance of tort litigation and has advanced the proficiency of advocacy immeasurably. Its efforts have been widely supported and advanced by numerous institutes sponsored by bar associations and law schools." *Id.* at 19 n.67.

23 See, *e.g.*, Horovitz, *Assaults and Horseplay Under Workmen's Compensation Laws*, 41 ILL. L. REV. 311 (1946); Horovitz, *Rehabilitation of Injured Workers—Its Legal and*

A. *The Causation Dispute*

The plaintiffs' bar has been accused of trying to convert workmen's compensation into a general scheme for compensating employee disabilities without regard to whether they are work-connected. Doubtless, claims which are unjustified in this sense are sometimes filed, but it is believed that the plaintiffs' bar generally has been attempting to correct the distortions inherited from twenty years of unilateral advocacy and to restore a sensible and humane social security approach. Such an approach is both more appropriate to the function of workmen's compensation and more in line with the intention of the movement which gave rise to the original statutes.

So long as the requirement of legal and medical causation is retained—as it still is—there is no danger that the distinction between occupational and non-occupational disability will suffer a general breakdown. Of course, there will be cases where the question of whether a disability is work-connected cannot be answered with scientific certainty. We must be content to answer those on the basis of reasonable probability in the light of current medical knowledge.[24]

B. *Equalizing the Contest*

Experience seems to indicate plainly that the role of claimants' attorneys in workmen's compensation is neither a luxury nor a parasitic growth, but a necessity. Of course, there are justifiable criticisms which may be made of the plaintiffs' bar. For example, claimants' attorneys have, it is urged, given entirely too much encouragement to the practice of lump-sum settlements. Lump-sum settlements are convenient and attractive to claimants' attorneys, as they are to the insurance carriers, but are seldom consistent with the goals and purposes of the workmen's compensation system.[25]

The indispensability of the plaintiffs' bar is perhaps most obvious where an ignorant, confused, preoccupied, and possibly frightened layman would otherwise be pitted against an experi-

Administrative Problems, 31 ROCKY MT. L. REV. 485 (1959); Marcus, *Compensability of Heart Disease—Legal Aspects*, 1962 INS. L.J. 341; Page, *Comments on Recent Important Workmen's Compensation Cases*, 28 NACCA L.J. 313 (1961-1962).

24 For a leading decision dealing with causation in workmen's compensation, see Dwyer v. Ford Motor Co., 36 N.J. 487, 178 A.2d 161 (1962).

25 See CHEIT, *op. cit. supra* note 2, at 274-79; MORGAN, SNIDER & SOBOL, LUMP-SUM REDEMPTION SETTLEMENTS AND REHABILITATION (1959).

enced and skillful professional advocate for the employer or the carrier in a most unfair and unequal contest. Yet it seems that the normal desire of industry and insurance companies to minimize costs and maximize profits is not the only element responsible for the problem. The New York Moreland Commission reported in 1944:

> "There is ample evidence that many . . . appeals have been taken by carriers and employers not in good faith, but evidently for purposes of delay and bargaining. . . . About 70 per cent of all appeals taken by carriers or employers were withdrawn. . . . The record of the State Insurance Fund is of special interest. In the three-year period in question, it withdrew 340 out of 366 appeals taken. . . . It thus appears that the Fund alone has taken hundreds of appeals with no serious intent of carrying them through."[26]

So it seems that not only private, but also public, bodies administering compensation funds can be litigious, indeed, abusively litigious.

Furthermore, not only is it clear that the adversary element is inherent in the system as it is presently financed, but we should be wary of the assumption that it can, or should, be wholly eliminated.

This is not to say that there is not too much litigation, since plainly there is. As Professor Davis has pointed out, it results from excessive carrier resistance to claims and is a wasteful drain on the resources of the present system.[27] Indeed, unless some private insurance carriers can adjust themselves to the idea that these are not tort claims, but insured losses which they have been paid to carry, and adjust their practices accordingly, the role of the private carrier will continue to be diminished in value, or may even be eliminated, as it has been in England.[28]

C. *Advantages of an Adversary System*

However, though far fewer claims should be resisted, it does not follow that a wholly non-adversary system should be the goal. Workmen's compensation will always involve the determination

26 RIESENFELD & MAXWELL, *op. cit. supra* note 4, at 342.

27 Davis, *Standing To Challenge and Enforce Administrative Action*, 49 COLUM. L. REV. 759, 788-89 (1949). See also ROBSON, *op. cit. supra* note 9, at 210-12.

28 SOMERS 299-308.

of questions of fact which are both disputed and fairly disputable. We have never evolved any method for their settlement which is as fair and reliable as having the two sides prepared and presented by opposing advocates for judgment by an impartial tribunal.[29]

The most ambitious attempt to eliminate the adversary element seems to be that made by the English in 1946, when they eliminated judicial review and barred lawyers from all steps in the proceeding except the final appeal to the commissioner.[30] The result was not the creation of a non-litigious administrative utopia. One effect was a series of decisions by the commissioner which were far more restrictive and illiberal than previous English or contemporary American court decisions on the same questions—and also far more technical, legalistic and hair-splitting.[31] Even administrators seemingly needed the assistance of a claimant's advocate. In 1958, the English readmitted the lawyers to compensation proceedings, after twelve years of experience with an almost lawyerless system.[32]

Certainly the claimant, even if not confronted with an adverse litigant, would be facing powerful adversaries in the form of the complexity of the statute, his ignorance of his rights and of how to assert them, and the bureaucratic rigidity which sets in when administrative power is not tempered by adversary proceedings. He needs to have someone on his side with expertise, devoted to his interests, and able to give his problems personal attention. A theory that the board, commission, or referee will double as his advocate does not answer the problem. Its quasi-judicial function precludes it from effectively playing that role. And, even if it could be trusted to argue the claimant's case, it still could not do other things which must be done, such as going out and digging up the evidence necessary to prove the claim.

Furthermore, what happens in the administrative claim proceeding is not the whole story of the role of the plaintiffs' bar. Larson, for example, points to "a marked increase in the generosity with which courts have interpreted the statutes," and adds that "it

29 "[A] system of controversy, by having both sides presented by persons competent to present them and threshed out in a way that, on the whole, experience has shown is the surest way of arriving at facts." Pound, *The Challenge of Occupational Disability*, in PROCEEDINGS OF THE AMERICAN MEDICAL ASSOCIATION COUNCIL ON INDUSTRIAL HEALTH (1955).

30 POTTER & STANSFELD, NATIONAL INSURANCE (2d ed. 1949).

31 Larson, *The Myth of Administrative Generosity: A Lesson from British Experience*, 40 A.B.A.J. 195 (1954).

32 CHEIT, *op. cit. supra* note 2, at 273.

would be an interesting speculation to inquire whether the courts or the legislatures have done more to bring workmen's compensation from its comparatively narrow beginnings to the place where we find it today."[33] Wherever a court has broadened and strengthened a statute, it means that a claimant's lawyer has successfully resisted a narrower construction. Usually it also means that the claimant's lawyer has first worked out, documented, and persuaded the court to adopt the line of thought which eventually became a judicial liberalization. The development of a plaintiffs' bar has also created a body of experts who can speak for the claimant's point of view in proposing legislative changes, defending them before legislative committees, and opposing legislative changes which might harm the workers' interests.

D. *Attorneys' Fees*

If the claimant's advocate plays a necessary role in workmen's compensation, it follows that the system should allow for his reasonable compensation. The anti-litigation and even anti-lawyer bias which marked the earlier stages in the development of the system resulted in controlling the claimant's attorney's fee at an unreasonably low figure in many jurisdictions.[34] Yet no attempt was ever made to limit the fees which might be paid to the carrier's attorney, notwithstanding the fact that these came out of premiums and were therefore necessarily capable of having a long-run depressant effect on the benefit level. The control and limitation of fees in connection with workmen's compensation is appropriate and necessary, but this misguided and one-sided application of the principle has not so much protected the claimant against the greed of attorneys as put him at a disadvantage by making it difficult for him to get equally competent representation. Furthermore, where the defense attorney is assured of additional pay for additional work, but his opponent is not, the defense attorney can take advantage of the situation by bringing unfair pressure for a compromise settlement—for example, by repeated petitions to reopen an award.

33 Larson's chapter in *Occupational Disability and Public Policy*, about to be published by the University of California. See also Larson, *Foreword*, 19 OHIO ST. L.J. 539-40 (1958).

34 For a compilation of statutes and regulations governing attorneys' fees in all jurisdictions, see BROOKS, ATTORNEY'S FEES IN WORKMEN'S COMPENSATION; A REPORT OF THE STANDARDS AND PROCEDURES IN STATE LEGISLATION, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 220 (1960).

Whatever its amount, the claimant's attorney's fee should be added to the award, not subtracted from it.[35] The statutory benefit is already scaled down to the minimum on which the injured worker can be expected to get by (in practice, it is often less) and should not be subject to any deductions. The cost of presenting the claimant's case should be insured as part of the system, just as the corresponding cost to the defendant already is. But until this is done, at least there should be a provision, as there already is in some states, permitting claimants' attorneys' fees to be imposed on the carrier where a defense, review, or appeal is undertaken without reasonable ground.[36]

IV. AN ADDITIONAL TORT REMEDY PROPOSED

Since the theory of eliminating lawyers from the compensation system has not worked out, and since the present system, after fifty years, concededly remains inadequate, should we not now restore the right of a negligently injured worker to bring a damage action, without requiring the surrender of his right to compensation payments? I would not propose that the employer should be compelled to pay a second time for any loss against which he has been compelled to insure, but merely that an injured worker who can prove that his injury was caused by his employer's negligence should have the right to a judgment restoring the full amount of his loss (which compensation does not cover and does not purport to cover), less whatever he may be entitled to under the compensation system. This would be a less stringent standard than that which already prevails in England, where the injured worker retains his right to a negligence action as a cumulative remedy—and only half of the amount to which he is entitled under compensation is deducted.[37] Such an added remedy would be humane, equitable, and logical for a number of reasons.

First, if the employer negligently damages another's property, he is required to restore the full amount of loss; why should his responsibility be less for negligent injury to a human being? The rise in jury awards in personal injury cases in recent years reflects (in addition to rising living standards) an increased awareness that the injured plaintiff must be valued as a human being. Compensa-

35 CHEIT, *op. cit. supra* note 2, at 268; Larson, *"Model-T" Compensation Acts in the Atomic Age*, 18 NACCA L.J. 39, 47 (1956).

36 See BROOKS, *op. cit. supra* note 34.

37 SOMERS 307.

tion values him as an instrument of production—and it is proper that it should, since compensation is a wage-loss insurance system. But, for that very reason, it is improper that a system which cannot take into account his value as a human being should be his exclusive remedy.

Second, if the employer negligently injures a third person, he is required to restore the full loss. And the employee can claim damages on the same principle, notwithstanding his entitlement to compensation, if the negligence of a third party is the source of his injury.[38] When full restoration for negligently caused injuries is the general rule—and exceptions such as charitable and governmental immunities are currently being eliminated[39]—why should a negligently injured person be discriminated against merely because the wrongdoer happened to be his own employer?

Third, the added tort remedy would involve principally those cases, such as death and serious permanent disability, in which workmen's compensation has proved most chronically, stubbornly, and cruelly inadequate.[40]

Fourth, the added tort remedy would make it possible to compensate, in many cases, damage elements which compensation often does not reach (and is not intended to reach), such as pain and suffering, and injuries producing permanent disfigurement, impotence, or sterility, which may be of tragic severity yet still fail to fit into the compensation picture because they result in little or no wage loss.[41] Doubtless it would be extending compensation beyond its intended function to impose liability without fault for such losses. But when they are the result of negligence, and would be fully compensable in tort if the victim were a non-employee, why should they go uncompensated merely because a loss of a different kind has been insured against?[42]

38 See generally McCoid, *The Third Person in the Compensation Picture: A Study of the Liabilities and Rights of Non-Employers*, 37 TEXAS L. REV. 389 (1959).

39 See, *e.g.*, Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961) (governmental immunity); Mullikin v. Jewish Hosp. Ass'n, 348 S.W.2d 930 (Ky. 1961) (charitable immunity).

40 See generally CHEIT, *op. cit. supra* note 2, at 61-185. See also Larson, *The Future of Workmen's Compensation*, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. No. 180, at 5, in IAIABC PROCEEDINGS (1954); Katz & Wirpel, *Workmen's Compensation 1910-1952: Are Present Benefits Adequate?*, 1953 INS. L.J. 164.

41 See 2 LARSON, *op. cit. supra* note 5, at 160-62.

42 In using the phrase "fully compensable," the author suggests its fulfillment by the abolition of the common-law defenses of contributory negligence, the fellow-servant doctrine and assumption of risk. This was substantially accomplished in England when

Fifth, the fact that avoidable injuries would cost the employer more than unavoidable ones would create an effective economic motive for safety and prevention—much more so than the relatively slight pressures brought about by differential premiums resulting from experience ratings.[43]

It will be objected that industry cannot afford it. Of course, there has always been that complaint. It was made when employers' liability acts were first proposed. It was repeated when workmen's compensation was first proposed and has been heard since on every occasion when an effort has been made to improve the system. Added remedies have been available in England, and apparently in other countries as well, and seem not to have brought industry to a halt. Something similar has long been available in admiralty law in this country. Under the automobile compensation system in Saskatchewan, the right to a tort remedy is retained, and the compensation award is deducted from the damage judgment. The total costs for both compensation and liability coverage is far less than the average motor vehicle insurance coverage costs the American motorists.[44]

A. *Effect on Compensation Benefit Levels*

Pollack argues that "to obtain workmen's compensation (or social insurance) *and* tort liability as concurrent remedies would probably be at the expense of the workmen's compensation component, which would tend to remain at a low level as a 'floor of protection.' "[45] However, he does not tell us *why* this would be probable. And what little evidence we have seems not to bear this out. No documented decision is herein made as to the adequacy of English compensation levels, but it is at least clear that they have been raised repeatedly in recent years, and thus the availability of a tort remedy does not seem to have stabilized them as a "floor

workmen's compensation was incorporated (but not absorbed) into the social security system (Beveridge Plan). See SOMERS 307.

The term "fully compensable" is already applicable to injured railroad and maritime employees in this country by virtue of the Federal Employer's Liability Act (FELA), the Jones Act, the Boiler Inspection Act, as well as the non-statutory doctrines of admiralty law, *i.e.*, seaworthiness.

43 SOMERS 106-09.

44 Malone, *Damage Suits and the Contagious Principle of Workmen's Compensation*, 10 NACCA L.J. 44 (1952).

45 Pollack, *A Policy Decision for Workmen's Compensation*, 7 IND. & LAB. REL. REV. 51, 61 (1953).

of protection."[46] In this country, we have seen the dollar amounts of maintenance and cure allotments expand in recent years, notwithstanding the fact that seamen have two additional remedies, one in negligence and one in strict liability for breach of the warranty of seaworthiness.[47]

Pollack also suggests that it is "more likely" that the employee would have to waive his compensation rights in order to sue.[48] This undoubtedly would be most undesirable. But why should any such requirement be accepted? The availability of immediate compensation payments would cure the tort action of one of its principal defects—slowness of recovery, with its resulting hardship and pressure for a compromise settlement—which caused its original abandonment. And if one is regarded as a form of social insurance and the other as an action to right a wrong, then why should either have to be waived in order to pursue the other?

B. *Renegotiating the Bargain*

This brings us back to the question of the "quid pro quo," the original agreement in which the workers' tort rights were supposedly bargained away in order to obtain a workmen's compensation system. This, it seems to me, was merely part of the hesitant and apologetic manner in which the compensation principle originally had to be introduced, in order to soften opposition and to mollify courts which, it was feared, might hold (as indeed the New York Court of Appeals once did)[49] that the imposition of liability without fault deprived the employer of property without due process of law. Exclusiveness of remedy was thus—like elective coverage or confining the act to "hazardous" industries—one of the compromises by which the initial blow was softened. Today it is generally recognized that coverage should be compulsory and that all industries should be included.[50]

Does exclusiveness of remedy have a better case? Probably not. If workmen's compensation were a substitute tort remedy,

46 SOMERS 299-311; MUNKMAN, EMPLOYERS LIABILITY AT COMMON LAW (1950), reviewed in 11 NACCA L.J. 314 (1953).

47 Stumberg, *The Jones Act, Remedies of Seamen*, 17 OHIO ST. L.J. 484-86 (1956). The rising costs of living and medical care govern the rising costs of maintenance and cure.

48 See Pollack, *supra* note 45.

49 Ives v. South Buffalo Ry., 201 N.Y. 271, 94 N.E. 431 (1911).

50 Parsekian, *Report*, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 213, at 96-98, in IAIABC PROCEEDINGS (1959); U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 212, *op. cit. supra* note 2.

then there would be reason to say that the worker cannot have both: he cannot have his new right and yet keep the old one for which it was substituted. But most authorities now agree that viewing compensation as a substitute tort remedy is unsound. Compensation, instead, is regarded as a type of insurance, the cost of which ought to be borne by the enterprise. Thus, it follows that installing the system did not deprive the employer of anything for which he has to be paid, nor bestow anything on the worker that he ought to be required to buy by surrendering rights to which he would otherwise be entitled.

We are already chipping away at the exclusiveness of compensation and experimenting with tort remedy restorations. Many jurisdictions allow third-party actions against co-employees,[51] and New Hampshire has gone so far as to permit a tort action against the employer's compensation insurance carrier for failing to discover defects in a compressed air tank, after the carrier had undertaken to conduct monthly inspections of the plant.[52] Employers have been held liable to their employees at common law for intentional torts such as assault and battery,[53] false imprisonment,[54] slander,[55] and conspiracy in submitting a false medical report.[56]

This chipping away cannot be attributed to greed on the part of plaintiffs and their attorneys, but to the fact that injured workmen and their dependents have serious needs which are not being met by the workmen's compensation system. It would be better for the future of that system, as well as for the victims of industrial injuries, if the need and propriety of restoring tort actions as a conjunctive, and cumulative, remedy were frankly recognized.

Compensation-covered employees cannot be expected to put up indefinitely with recoveries of one-fifth to one-tenth of the amounts which courts would award, and are awarding, for the same injuries in negligence cases. Unless the exclusive-remedy principle is abandoned, the inequities which have already caused railroad workers and seamen to resist extension of compensation to their industries may force others to press for its abolition. This would be

51 See, *e.g.*, Allman v. Hanley, 302 F.2d 559 (5th Cir. 1962) (FECA); Ransom v. Haner, 362 P.2d 282 (Alaska 1961); Hockett v. Chapman, 69 N.M. 324, 366 P.2d 850 (1961).

52 Smith v. American Employers' Ins. Co., 102 N.H. 530, 163 A.2d 564 (1960).

53 Boek v. Wong Hing, 180 Minn. 470, 231 N.W. 233 (1930).

54 Powers v. Middlesboro Hosp., 258 Ky. 20, 79 S.W.2d 391 (1935).

55 Braman v. Walthall, 215 Ark. 582, 225 S.W.2d 342 (1949).

56 Flamm v. Bethlehem Steel Co., 18 Misc. 2d 154, 185 N.Y.S.2d 136 (Sup. Ct. 1959), *aff'd*, 10 App. Div. 2d 885, 202 N.Y.S.2d 222 (1960).

tragic, as compensation will always be needed to cover wage losses which are part of the unavoidable risks of modern technology and are thus not compensable by any fault-oriented remedy. It would also be unnecessary, since experience in England and elsewhere shows that exclusiveness of remedy is not an intrinsic requirement of a sound compensation system, but merely one of the lasting birthmarks the system bears in this country as a result of the struggles and compromises by which it was brought into being.

But whether or not workmen's compensation solves its problems by the method here proposed, the claimants' advocate has been and is likely to remain a constant stimulus for the improvement of the system to the end that it will adequately and justly serve the injured worker.

Improvements in your social security cash benefits

Work requirements for blind people
Starting in January 1973, people who become disabled because of blindness will be able to get benefits if they are fully insured without having to meet the requirement of substantial recent work that applies to other disability applicants. The number of quarters of coverage that they need to qualify for benefits depends on their age when they become blind.

Blind people who applied for benefits in the past and were turned down because they didn't have enough recent work under social security should get in touch with their social security office. *They may now be eligible for monthly benefits.*

Disability waiting period
The new law provides that disabled workers and disabled widows (and dependent widowers) can get disability checks for the 6th full month they are disabled rather than for the 7th full month as before. *Benefits can first be paid under this provision for January 1973.*

Workmen's compensation offset
Under the old law, combined social security disability benefits and workmen's compensation benefits could total no more than 80 percent of the worker's average current earnings before he became disabled.

The new law provides another way to figure average current earnings. Beginning with January 1973, average current earnings can be based on the worker's highest earnings for any one year in the period starting 5 years before he became disabled and ending with the year he became disabled. This will allow higher payments to some disabled workers.

Disability claims after death

In certain limited situations, families may be able to get disability benefits because an insured worker who died after 1969 had a long period of severe disability. Applications for these benefits *must be filed no later than January 31, 1973,* if the worker died in the period from January 1, 1970, through October 1972. For deaths after October 1972, an application *must be filed within 3 months after the worker's death.*

Student benefits

Beginning in 1973, a full-time student's checks will not stop when he reaches 22 but will continue through the end of the quarter or semester in which he reaches 22 if he has not completed undergraduate degree requirements. If he attends a school other than one on a semester or quarter basis, checks will continue until he completes the course or for 2 months after the month he reaches 22, whichever comes first.

Benefits for divorced women

Under the old law, a divorced woman could get benefits on her former husband's earnings only if he was either providing one-half of her support or was obligated to do so and, in the case of benefits for an aged divorced wife or widow, only if the marriage had lasted for at least 20 years. The new law ends this support provision but retains the requirement—for aged divorced women—that the marriage lasted at least 20 years. *The change is effective January 1973. Call any social security office if you think you may be eligible for benefits.*

Benefits for grandchildren

Children may now be eligible for social security benefits based on a grandparent's earnings if the natural parents are disabled or dead and if the grandchildren are living with and are supported by the grandparent. *For more information, contact any social security office.*

Adoption by retired or disabled worker

The new law changes the requirements that must be met for a child who is adopted by a retired or disabled worker to get checks based on his adopting parent's earnings.

The changes are effective for benefits payable for January 1968 and after if application is filed *before May 1973*; otherwise the changes are effective with benefits payable for October 1972 and after. *For more information, call any social security office.*

Adoption doesn't stop checks

Under the amendments, benefits for a child no longer stop if the child is adopted by a distant relative or some other person; benefits will continue regardless of who adopts the child. A child whose checks were stopped because he was adopted and who otherwise would still be eligible for benefits may again apply for checks, which can be paid back to October 1972.

Duration of marriage in accident cases
A widow (or dependent widower) and stepchildren of a worker who died accidentally or in the line of duty while on active duty with the Armed Forces can now get survivors benefits even if the marriage lasted less than 3 months. Previously, the marriage must have lasted at least 3 months for these survivors to get benefits.

Wage credits for Japanese-Americans
The new law grants free social security wage credits to U.S. citizens of Japanese ancestry for the period they were interned by the U.S. Government during the World War II period and were age 18 or over. If you think these free credits could increase your monthly payment, you should apply for the credits. *If an increase is due you, it can first be paid for January 1973.*

Financing
The changes in the financing of the social security program insure that the retirement, survivors, disability, and hospital insurance programs will continue to be financially sound and that there will be sufficient income to pay all benefits provided under the social security program, now and in the long-range future.

The contribution rate schedules under the new law follow:

U.S. Department of
Health, Education, and Welfare
Social Security Administration
DHEW Publication No. (SSA) 73-10328
December 1972

Year	Retirement, Survivors, and Disability Insurance	Hospital Insurance	Total
	Employer-Employee, each		
1972	4.60%	0.60%	5.20%
1973-77	4.85	1.00	5.85
1978-80	4.80	1.25	6.05
1981-85	4.80	1.35	6.15
1986-92	4.80	1.45	6.25
1993-97	4.80	1.45	6.25
1998-2010	4.80	1.45	6.25
2011+	5.85	1.45	7.30
	Self-employed		
1972	6.90%	0.60%	7.50%
1973-77	7.00	1.00	8.00
1978-80	7.00	1.25	8.25
1981-85	7.00	1.35	8.35
1986-92	7.00	1.45	8.45
1993-97	7.00	1.45	8.45
1998-2010	7.00	1.45	8.45
2011+	7.00	1.45	8.45

Under the law, the base will be $10,800 in 1973 and increase to $12,000 in 1974, with automatic adjustments thereafter as earnings levels rise.

For more information

If you have a question about these changes or any other social security matter, call the the nearest social security office. The people there will be glad to help you. For the number, look in your phone book under "Social Security Administration."

☆ U.S. Government Printing Office 1973—734-090/8

Improvements in your social security cash benefits

Major changes in the social security law will bring higher payments and greater protection to millions of Americans starting in 1973.

Legislation last summer increased social security benefits by 20 percent, with the increased payments starting last October. This legislation also provided for automatic increases in benefits in future years to keep pace with increases in the cost of living. This means that from now on there is a guarantee in the law that regular social security benefits will be "inflation proof."

Increased benefits for many widows, a new way of figuring retirement benefits for men, a more liberal earnings test, a special credit for people who delay their retirement past age 65, and a new special minimum benefit for people who worked under social security more than 20 years are among the improvements in cash benefits resulting from further legislation in October.

In addition to the changes made in the social security cash benefits program, the most recent amendments also set up a new Federal program of supplemental security income for eligible needy people who are 65 and over, or blind, or disabled.

DHEW Publication No. (SSA) 73-10328

The new supplemental security income program, which will start in January 1974, will provide for Federal payments to assure a minimum level of income for the aged, blind, and disabled. Eligibility will be based on income and assets. Although the new program will be administered by the Social Security Administration, it will be financed from general revenues. No one needs to get in touch with social security now. More information about this new program will be available soon at any social security office.

For information about changes in Medicare, ask for the leaflet, *Improvements in Medicare Protection.*

Changes in the cash benefits program are described on the following pages.

Most people need not apply

Most people who are due increases don't have to do anything to get them. We'll see that any increase due will be included in their checks. You may be one of them:

- If you're 60 or over and getting widow's (or widower's) benefits (page 6).
- If you worked many years at low pay (page 7).
- If your checks are reduced because you get workmen's compensation payments (page 10).
- If you didn't retire until after 65 (page 8).
- If you're getting benefits as a student, age 18-22 (page 11).

Some need to apply

Some people need to apply to receive benefits under other 1972 social security changes. Contact any social security office if you or someone in your family is:

- A divorced woman previously ineligible for benefits because of support requirements (page 11).
- An adult who was disabled before age 22 (page 9).
- A widow age 60 or over getting checks only on her own earnings record (pages 6 and 7).
- A dependent widower age 60 or over (page 7).
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- A beneficiary getting checks on the record of someone who served in military service between 1957 and 1967 (page 9).
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If you work

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If you earn more than $2,100 in 1973, $1 in benefits may be withheld for each $2 in earnings above $2,100. This $1 for $2 rule applies to all earnings above $2,100.

Also starting in 1973, no matter how much you earn in a year, your full benefit will be paid for any month in which you neither earn more than $175 in wages nor perform substantial services in self-employment. The monthly amount is $140 for 1972. A retired worker's earnings after retirement may affect the benefits of others getting benefits on his record.

(*Note:* Different rules apply to earnings of people getting social security disability benefits.)

Also starting in 1973, in the year you reach 72 only earnings you have in months before age 72 will count in figuring what benefits are due you for those months. Under the old law, earnings in the entire year you reach 72 were counted in figuring benefits due you for months before you were 72.

As the level of average earnings goes up in future years, you will be able to earn still more without having benefits withheld. Both the $2,100 annual exemption and the $175 monthly exemption will rise automatically to keep pace with average earnings. The first automatic increase can occur no earlier than 1975, and then only if there is an automatic benefit increase based on a rise in the cost of living.

Benefit increases for widows

The benefit for a widow (or dependent widower) who starts getting benefits at age 62 or later can now range from 82½ percent to 100 percent of her husband's full benefit, instead of being limited to 82½ percent as in the past. Her benefit rate depends on her own age when she first starts getting benefits, as well as the benefit her husband would be getting if he were still alive. Assuming a widow's husband never got a reduced retirement benefit, her benefit is as follows:

Widow's age	Widow's share of worker's full benefit
65	100.0 Percent
64	94.3
63	88.6
62	82.9
61	77.2
60	71.5

If the widow's husband took benefits before age 65, the widow's benefit can be no more than the amount he would be getting if still alive. In no case, though, will a widow whose benefits start at age 62 or later get less than 82.5 percent of his full benefit.

This increase is effective for January 1973. If you are due an increase under this new rule, your benefit will be refigured and any increase due you will be included in the check you get early in February. If, however, you are a widow age 60 or over getting checks only on your own earnings record and you never applied for widow's benefits, *you should get in touch with your social security office to see if you are now eligible for a higher benefit based on your husband's earnings record.*

Reduced benefits for widowers

If you are a dependent widower who would be eligible for monthly cash benefits at 62 on your deceased wife's social security record, you can now apply for reduced checks as early as 60. The change for widowers is effective January 1973.

Special minimum benefit

The new law provides a special minimum benefit at retirement for people who worked under social security more than 20 years. This change will help people who had low incomes in their working years. The amount of the special minimum depends on the number of years of coverage. For a worker retiring at 65 with 25 years of coverage, the minimum would be $127.50 a month; with 30 or more years of coverage, the minimum would be $170. Most people who have worked more than 20 years under social security already receive benefits higher than the special minimum. *If any increase is due you, it will be included in the check you get in early April.*

Figuring men's benefits

Under the 1972 amendments, retirement benefits for men who reach 62 in 1975 or later will be figured the same way as they are for women. The new provision will be put into effect in three annual steps—1973 through 1975. The change will mean higher benefits for most men who reach age 62 in the future and for their dependents and survivors.

Under the old law, if a man and woman of the same age had the same earnings over the years, the woman would generally have a higher benefit rate. Under the new law, a man and a woman who are the same age will have equal benefits if they had equal earnings. The work credits required to qualify for benefits also will be the same for both men and women.

Delayed retirement credit

A worker who doesn't get any benefits before 65 and who delays his retirement past age 65 will get a special credit that can mean a larger benefit. The credit adds to a worker's benefits 1 percent for each year (1/12 of 1 percent for each month) from age 65 to age 72 for which he did not get benefits. The credit applies only where a worker has earnings after December 1970. The increase, which will be effective for January 1973, does not increase benefits of dependents or survivors. *If your benefit will be higher because of this change in the law, you will get the increase in early June.*

Military service credits

Under another change in the law, social security credits of $100 per month are granted for active military service during the period 1957 through 1967. Up to now, the credits were given only for active service after 1967.

If you served in the Armed Forces during the 1957-67 period or you are a survivor of someone who did, and are now getting monthly checks, get in touch with your social security office. You may be eligible for a higher monthly benefit. *Benefit increases on the basis of these credits can first be paid for January 1973.*

Disability before age 22 and renewed eligibility for certain adults disabled in childhood

Starting in January 1973, a person who becomes disabled before age 22 can get childhood disability benefits if one of his parents is entitled to retirement or disability benefits or dies after working long enough under social security. (Before, childhood disability benefits could be paid only if the disability began before 18.)

The new law also provides that monthly benefits can be started again if a person who once got checks as an adult disabled in childhood and later recovered becomes disabled again within 7 years after his previous disability ended.

Contact any social security office if you think a member of your family is eligible for these benefits.

Improvements in your social security cash benefits

Major changes in the social security law will bring higher payments and greater protection to millions of Americans starting in 1973.

Legislation last summer increased social security benefits by 20 percent, with the increased payments starting last October. This legislation also provided for automatic increases in benefits in future years to keep pace with increases in the cost of living. This means that from now on there is a guarantee in the law that regular social security benefits will be "inflation proof."

Increased benefits for many widows, a new way of figuring retirement benefits for men, a more liberal earnings test, a special credit for people who delay their retirement past age 65, and a new special minimum benefit for people who worked under social security more than 20 years are among the improvements in cash benefits resulting from further legislation in October.

In addition to the changes made in the social security cash benefits program, the most recent amendments also set up a new Federal program of supplemental security income for eligible needy people who are 65 and over, or blind, or disabled.

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The new supplemental security income program, which will start in January 1974, will provide for Federal payments to assure a minimum level of income for the aged, blind, and disabled. Eligibility will be based on income and assets. Although the new program will be administered by the Social Security Administration, it will be financed from general revenues. No one needs to get in touch with social security now. More information about this new program will be available soon at any social security office.

For information about changes in Medicare, ask for the leaflet, *Improvements in Medicare Protection.*

Changes in the cash benefits program are described on the following pages.

Most people need not apply

Most people who are due increases don't have to do anything to get them. We'll see that any increase due will be included in their checks. You may be one of them:

- If you're 60 or over and getting widow's (or widower's) benefits (page 6).
- If you worked many years at low pay (page 7).
- If your checks are reduced because you get workmen's compensation payments (page 10).
- If you didn't retire until after 65 (page 8).
- If you're getting benefits as a student, age 18-22 (page 11).

Some need to apply

Some people need to apply to receive benefits under other 1972 social security changes. Contact any social security office if you or someone in your family is:

- A divorced woman previously ineligible for benefits because of support requirements (page 11).
- An adult who was disabled before age 22 (page 9).
- A widow age 60 or over getting checks only on her own earnings record (pages 6 and 7).
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