

NCCI

Workers' comp market "deteriorating"

The workers' compensation calendar-year combined ratio jumped to 115 last year, up 5 points from 2009 and 14 points from 2008. The National Council on Compensation Insurance cited that as another indication of the deteriorating workers' compensation market.

"In 2010, NCCI defined the state of the workers' compensation industry as 'precarious' based on considerable uncertainty about where the market was headed," said Steve Klingel, NCCI president and CEO. "Unfortunately, that uncertainty has, to a large extent, been resolved—and not in a positive direction. We have continued to witness ongoing deterioration in market fundamentals. Today, the workers' compensation industry faces a number of difficulties that will confront market stakeholders in the weeks and months to come."

Other market indicators/trends highlighted in the recently released NCCI's 2011 State of the Line report include the following:

- The 2010 Accident Year combined ratio is 114, also up 5 points from 109 for Accident Year 2009.
- The decline in lost-time claim frequency stopped in 2010. Claims frequency likely increased three percent, NCCI estimates.
- The average medical cost per lost-time claim increased 2% in 2010.

Despite gains from investments, workers' compensation private carriers posted a pre-tax operating loss of 1%. This

is the first pre-tax operating loss for the line since 2002, and the worst result since 2001.

According to the NCCI, workers' compensation costs comprise 1.6% of employers' total compensation costs. Wages and salaries account for nearly 71% of total compensation costs, followed by about 20% for health insurance, and a total of 7.5% for paid leave, supplemental pay, insurance (other than health) social security, retirement and savings.

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In his well-regarded blog on the workers' compensation industry, Managed Care Matters, observer Joseph Paduda notes that since 2005, workers' compensation net written premiums have dropped from about \$50 billion to \$35 billion, a drop of about 30%. "That's a massive loss, and that's why everyone, and every business even remotely connected to work comp insurance has been hammered over the last few years," he writes.

He mentions several trends that point to an inescapable conclusion. "When you add a strengthening economy, growth in employment, and a faster pace of work - and the likely outcome of all that, which is an increase in claim frequency, coupled with the increased severity we've been experiencing for some time now, and the near-term outlook for workers comp doesn't look so bright," he says.

What does this mean for you? "A tighter market by the end of 2011 and increasing prices," he concludes.

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President's Note

Looking for speakers for our 2012 conference



We had an enjoyable and educational conference at Wrightsville Beach in March and we are already making plans for next year. Our 2012 annual conference is set for March 28-30 at Wrightsville Beach.

A number of you contacted us at the conference to say you'd be interested in speaking at our 2012 conference. In fact, we already have a pretty firm proposal from one of our members, and we would love to hear from more of you. Please contact our board member Stephanie Gay and/or executive director Moby Salahuddin, as they will develop the 2012 program over the summer.

We are looking for fresh ideas or fresh angles on traditional concerns. If you are not interested in being a speaker you can still help us by suggesting topics and speakers. Most of the presentations at our conference are about 45 minutes long.

We welcome handouts, but please keep these to a minimum. There is no need to make a copy of every slide in your presentation. If audience members are interested they will contact you or us for details.

In choosing speakers, our first preference would be to select speakers who can address issues of interest to our members and can be relied upon to provide us course outlines and bio details on time. We look forward to hearing from you.

With very best wishes,
Jay Norris

CASE LAW UPDATE

By Joe Austin



Statute of Limitations on Medical Expenses

Until recently, there was uncertainty as to whether the statute of limitations on medical expenses would apply unless an employee had received payment for a PPD rating. In this regard, the Workers' Compensation Act allows an employee two years after the final payment of indemnity benefits within which to pursue additional indemnity compensation, but our courts have held that provision only applies if there has been a "final award" by the Industrial Commission.

By separate statute, the Act requires an employer to provide treatment for compensable injuries for up to two years from the final payment of indemnity or medical benefits, but employees' attorneys have argued that the "final award" requirement also applies to that statute.

In the case of *Busque v. Mid-America*, the Court of Appeals resolved the issue. The employer's last payment of benefits was by check to the employee in 2003, but in 2007, the employee made a claim for additional medical benefits. The full Commission ordered the employer to pay for a second opinion, and the employer appealed on the grounds that the claim was too late. The Court of Appeals reversed, rejecting the employee's argument that the statute of limitations for medical expenses does not commence until a final award has been entered, and applied the plain language of the Act to preclude the claim. This is a significant decision, because it closes the door to many potential claims for additional medical expenses that would otherwise be dormant.

Mediated Settlements

Usually, if mediation is successful, the parties will sign an agreement with the expectation that formal settlement documents will be prepared and signed later, and the Industrial Commission has generally been inclined to enforce such agreements, even if one of the parties fails to sign the formal settlement documents. However, the recent case of *Kee v. Caromont Health* emphasizes the importance of language used in such agreements. In that case, the employee agreed, at mediation, to settle her workers' compensation claim and to sign a resignation and release of employment rights.

Later, the employee declined to sign the settlement documents, and the employer requested the Commission to enforce the agreement. Noting that the agreement did not comply with the requirement in Commission's rules that any settlement must contain language to the effect that no rights other than those arising under the Act are being released, the Commission ruled that the agreement was not enforceable, and the Court of Appeals agreed. The Court's opinion discusses the employer's argument that the language regarding the resignation and release of employment rights was severable from the remainder of the agreement.

Joe Austin leads the workers' compensation practice group at Young Moore and Henderson in Raleigh. A graduate of Davidson College, Joe received his law degree from Wake Forest University.

NC grapples with comp reform

Representatives for employers and workers are said to be making significant progress towards a compromise on House Bill 709, which seeks to revamp North Carolina's workers' compensation system for the first time in nearly 15 years.

As the North Carolina Chamber describes it, the proposed legislation restores balance by:

Improving the Structure, Operation and Accountability of the Industrial Commission

- Reduces the number of commissioners from seven to five, and requires legislative confirmation
- Requires commissioners to follow the "judicial code of conduct"
- Brings the Industrial Commission under the Administrative Procedures Act, like other state agencies

Bringing back medical treatment to original statutory intent where the employer directs medical care

- Provides equal access to medical information for both sides
- Clearly defines in statute what information a doctor may release and to whom
- Improves the rehabilitation process

Making Common Sense Requirements for Claims and Benefits (These changes only affect future claims)

- Disqualification of benefits if an employee knowingly and willfully makes misrepresentations on physical condition when applying for a job
- Defines the term "suitable employment" to provide clarity following court decisions that have made it more difficult to get employees back to work
- Set a cap of 500 weeks (ten years) on Temporary Total Disability (TTD) bringing North Carolina in line with surrounding states
- Increases Temporary Partial Disability (TPD) from 300 to 500 weeks raising North Carolina to the highest level among surrounding states

- Increases the death benefit from 400 weeks to 500 weeks

"There is pretty much a broad consensus on the bill, except for three provisions," reports Bob Kaylor, lobbyist for the North Carolina Association of Self-Insurers. He adds the parties are trying to reach agreement on the 500-weeks cap on temporary total disability benefits, employers' access to medical information, and definition of "suitable employment."

The various parties conferred together for nearly 13 hours on May 11. The House Select Committee on Tort Reform is expected to vote on the measure May 19. If the bill is reported out of committee, the House will likely vote on it towards the end of May.

State holds its own in Oregon study

North Carolina improved its ranking by one spot in the most-recent Oregon Workers' Compensation Premium Rate Ranking. According to the study, employers in 28 states and the District of Columbia pay less for workers' compensation than employers in North Carolina.

North Carolina is ranked 23rd in the study, which provides a snapshot of where matters stood as of January 1, 2010. Montana and Alaska, the most-expensive states, are ranked first and second, while North Dakota and Indiana, the least-expensive states, are ranked 51st and 50th respectively.

Although the Oregon study draws broad attention, its remains unclear how accurate it is or how useful are its rankings. The study authors caution against drawing too firm conclusions from it because it can be difficult to compare one jurisdiction with another.

"And of course, comparative cost is just one aspect of system performance," notes Mike Manley, research coordinator at Oregon's department of consumer and business services and one of the authors of the Oregon study.

"A system that encouraged safe workplaces, delivered adequate benefits, delivered quality effective medical care, minimized and promptly resolved disputes, and maximized return to work might well be relatively costly, but nevertheless a great value for the money," he says.

coming up

October 19–21, 2011

16th Annual North Carolina Workers' Compensation Educational Conference.

Raleigh Convention Center, Raleigh.

March 28–30, 2012

North Carolina Association of Self-Insurers. Annual Meeting & Educational Conference.

Holiday Inn Resort, Wrightsville Beach.

April 11–13, 2012

Members-Only Forum. South Carolina Self-Insurers Association.

Litchfield Beach & Golf Resort.

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www.ncselfinsurers.com

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NCASI

NORTH CAROLINA
Association of Self-Insurers

The employers' voice in workers' comp

Mandatory course for rehab professionals

Effective July 1, 2011, every rehabilitation professional providing services in North Carolina must complete a one-day course covering the basics of workers' compensation in the state, according to the North Carolina Industrial Commission. The Commission specifies that in order to be recognized as "Qualified" under Section IV of the NCIC Rules for Rehabilitation Professionals, rehab professionals must complete the comprehensive course entitled Workers' Compensation Case Management in NC: A Basic Primer for Medical and Vocational Case Managers.

"We think this is a good thing. We are pleased about it," says Jo Lee MacLeod, Carolinas Manager at GENEX Services. She says the mandatory course was several years in the making because rehab professionals promoting the requirement wanted to make sure it had the approval of all stakeholders.

The next course will be offered June 9, 2011 in Raleigh at the Select Therapy Multipurpose Room; another is scheduled for November 1, 2011 in Charlotte.

Among the topics on the agenda for the day long program in Raleigh:

- Introduction and Purpose of Training
- History of the NC Workers' Comp Act
- History of NC Rehab Rules
- Basics of Case Management
- A Detailed Review of Rehab Rules
- Dealing with Tough Issues
- Case studies

Registration fee is \$60 for members of the International Association of Rehabilitation Professionals and \$75 for non-members.