

Comp premiums

NC maintains Middle-of-the-Pack Ranking

Twenty-one jurisdictions in the U.S. had lower workers' compensation premium rates than North Carolina in 2022, according to a widely followed report from Oregon's department of consumer and business affairs. Oregon releases its workers' compensation premium rate rankings every two years.

North Carolina continues to maintain its middle-of-the-pack position – in 2020, 20 jurisdictions had lower rates, while eight years ago 24 states had lower premium rates than North Carolina. According to the most-recent report, South Carolina had higher premium rates than North Carolina in 2022, while Virginia, Tennessee, and Georgia had lower rates. Workers' compensation premium rates tend to be lowest in North Dakota, West Virginia, and Arkansas, while rates tend to be highest in New Jersey, Hawaii, and California.

The national median index rate has fallen steadily over the last 25 years or so, from a high of \$4.35 per \$100 of payroll in 1994 to \$1.27 per \$100 of payroll in 2022. Oregon has analyzed workers' compensation premium rates in all U.S. states and the District of Columbia since 1986, using a methodology that controls for interjurisdictional differences in industry compositions. The study compares premium rates for the same set of industry classes across all jurisdictions, after weighting by the industry payroll in Oregon, to arrive at a normalized premium index rate that reflects differences in premiums.

As the report explains, there are many reasons why premium rates vary among jurisdictions: insurers' administrative costs are constrained by regional market forces; taxes and assessments are imposed at different rates and use different bases; and accidents and illnesses occur at varying rates as natural and random processes.

Given that Oregon's report is closely watched by other states interested in how their rates compare nationally, the report's authors mention several caveats. Among them the fact that trends in workers' compensation systems and insurance markets have resulted in declining differences in states' rates. "A narrower rate distribution (decreasing difference between maximum and minimum values) makes rank values more volatile from one study to the next, making the numerical ranking less meaningful," the report concludes.

Separately, on September 22, 2022, the North Carolina Rate Bureau filed for a decrease of 4.8% from loss costs approved effective April 1, 2022. By industry group, the changes are: Manufacturing 3.8% decrease; Contracting 5.7% decrease; Office & Clerical 5.9% decrease; Goods & Services 5.2% decrease; and Miscellaneous 3.7% decrease. The bureau notes that within each industry group, the change will vary from the average by classification depending upon the volume and character of the particular classification experience.

The most-recent rate filings in North Carolina are not reflected in the latest Oregon study. However, rates may have decreased in other jurisdictions as well, leaving North Carolina's position largely unaffected.

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CASE LAW UPDATE

By Lindsay Underwood



Withdrawal of *Sturdivant v. NC DPS:* ***The Impact on Workers' Comp Extended Benefits***

One of the hot topics in workers' compensation over the past few years has been entitlement to extended benefits and what standard the courts would apply to determine the same. Most recently, the Court of Appeals issued a decision in one of the cases currently pending - *Sturdivant v. NC Department of Public Safety*. Interestingly, the opinion has since been withdrawn, and it is unclear how the Court will move forward at this juncture. Even so, the opinion merits discussion.

As a reminder, the key question presented by the extended benefits cases is what analysis the courts would use to determine entitlement to benefits beyond 500 weeks. The plaintiff's bar argued that the standard remains the same in pre-500 week and post-500 week cases. Defendants argued that benefits beyond the 500-week cap have an increased standard, such that a claimant has the burden to show a total loss of wage-earning capacity.

In *Sturdivant*, the claimant sustained a compensable injury to the back in 2011. Claimant was a high school graduate, certified to drive a forklift, had training in blueprint reading, and had CPR experience. The claimant had been on his church's Board of Trustees since 2008. Four of the claimant's physicians testified he could work and noted he could perform many of the essential functions of his prior job as a correctional officer.

Claimant only started looking for work in January 2020 and produced a job log, but some of the entries were inaccurate. Defendants' vocational expert met with the claimant, performed a transferrable skills analysis, performed a labor market survey and identified several jobs in the surrounding area that claimant was capable of performing. Claimant's vocational expert testified claimant was unable to work at all. However, the vocational expert did not contact any potential employers, and only looked for jobs in Anson County. As a result, Deputy Commissioner Erin Taylor afforded more weight to the defendants' vocational expert and determined that claimant could not show a total loss of wage-earning capacity and was not entitled to extended benefits beyond the 500-week cap on benefits.

Plaintiff appealed to the Full Commission, and the Full Commission affirmed the decision finding claimant failed to meet

his burden to establish a total loss of wage-earning capacity. Plaintiff appealed to the Court of Appeals. The Court of Appeals agreed with the lower courts and affirmed the denial of extended benefits, but specifically noted that the standard for total loss of wage-earning capacity and total disability are the same.

Though they found that claimant still has the burden of proof to show they sustained the loss, the standard for disability does not change when a claimant applies for benefits beyond the 500-week cap. The Court further noted claimant could receive extended benefits even if not medically restricted from all work, if he showed there were no jobs available to him. Since the claimant did not meet his burden, he was not entitled to extended benefits in this case.

Though a victory for the Defendants in this specific case, the conclusion that there is no higher standard for disability once the claimant applies for extended benefits creates significant additional exposure for Defendants. However, as noted above, the Court has now withdrawn its opinion. It is unclear how they will proceed, or what this means for extended benefit cases moving forward. It should be noted that *Mary Betts v. North Carolina Department of Health and Human Services – Cherry Hospital*, is still pending before the Court of Appeals and a decision has not been issued in that case.

As we are somewhat back to square one when it comes to guidance in light of the withdrawal, our recommendations for handling remain the same: retain credible experts (both medical and vocational), investigate claimant's job search, hobbies, and non-work related activities and participation, obtain a detailed understanding of claimant's job history and educational background, and make sure your vocational expert meets with claimant to identify possible jobs and explore work history.

Lindsay Underwood is an attorney in Teague Campbell's Raleigh office. She is a graduate of Cleveland State University and Wake Forest University School of Law.

President's Note

Your Thoughts on the Conference

Many of you were pleased with the renovated Holiday Inn at Wrightsville Beach, and a number of you also commented favorably on the mix of topics – regulatory, medical, legal – featured at our annual conference earlier this year. Despite the many favorable evaluations we received this year, I am reluctant to call the conference a complete success as we sorely need the participation of more employers.

The anemic response from employers is not unique to us. Virtually every self-insurers' association is struggling to retain and draw more employers. Since some of you commented that we need more employers at the conference, I would like to note attracting more employers has been one of my top priorities and we have been working with several vendors to spread the word about our association. I am optimistic our efforts will bear fruit in subsequent years.

Once again, we received several excellent and intriguing suggestions for presentations, among them the recommendation

we feature a talk on the interplay of workers' compensation and ADA/FMLA, perhaps a presentation on artificial intelligence/machine learning, a discussion on return-to-work contracts, and possibly a focus on claims performance-metrics that matter, apart from the issue of costs.



One common thread in the evaluations was the suggestion we facilitate more face time among the registrants. We have spoken to the hotel about keeping the bar open beyond their absurdly earlier closing and have been assured it won't be a problem next year.

I appreciate your comments and suggestions. Please send us additional thoughts as you think of them so we can have an even better conference next year.

Stephanie Gay

Comp premiums

Another Healthy Year for the Comp Industry

Private insurance carriers reported their ninth consecutive year of underwriting profitability with a Calendar Year 2022 combined ratio of 84. It is the sixth consecutive year with a combined ratio below 90 for the workers' compensation insurance market, according to recently released figures by the National Council on Compensation Insurance.

NCCI also reports workers' compensation premium increased 11% in 2022, highlighting a return to a similar level of premium as in 2019, \$47.5 billion. "Despite an unsettled environment over the past few years, the reality is that workers' compensation has had more tailwinds than headwinds influencing results," noted Bill Donnell, president and CEO of NCCI.

Among other details reported by the agency:

- Lost-time claim frequency returned to its 20-year trend, declining 4% in the past year.
- A notable rise in severity for 2022 with medical claim severity increasing about 5% and indemnity claim severity rising about 6% year over year. The longer-term perspective indicates this is a manageable rise.
- Workers' compensation's accident year combined ratio is 97% with prior years continuing to experience downward reserve development.

- The workers' compensation reserve redundancy grew to \$17 billion.

NCCI Chief Actuary Donna Glenn says the worst fears about uncontrolled exposure to COVID never materialized as workers and employers adopted and adjusted to remote work. She adds remote work is here to stay, and for the foreseeable future the agency does not anticipate a full work-week in the office.

She says apart from fewer accidents in the workplace, the workers' compensation line has benefited from regulations setting up medical fee schedules, treatment guidelines, and prescription drug formularies. Also, opioid use has declined, and employers are using more generic drugs.

NCCI says in recent surveys insurance executives have said economic uncertainty and medical inflation are two of their top concerns. However, even as the consumer price index was running at an annual rate of 6.5%, paid medical costs per claim rose only 2% in 2021.

coming up

Wednesday, March 27- Friday, March 29, 2024

NCASI Annual Conference 2024

Make reservations by February 25, 2024 to get the discounted rate

Lumina on Wrightsville Beach

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The employers' voice in workers' comp

NC Industrial Commission Update

By Tracey L. Jones

New Procedure: Report of Mediator Fee Invoices to be emailed when the Mediator is appointed

On Monday, February 20, 2023, the Industrial Commission began emailing Report of Mediator fee invoices at the time the mediator is appointed. The Report of Mediator invoice will be sent to defense counsel by email shortly after the Appointment of Mediator Order is emailed.

This new procedure, which was created in response to stakeholder feedback, will give employers and carriers additional time to process and pay Report of Mediator fees. Upon receipt of the Report of Mediator invoice, the \$200 fee can be paid online via credit card (MasterCard or Visa) or e-Check. A link for online payment will be provided in the email. The \$200 fee also may be paid by paper check mailed to the Industrial Commission.

Amber May appointed as the NCIC's Chief Operating Office Effective June 1, 2023

May currently serves as the Commission's General Counsel, having returned to the Commission in March of 2022 after eight years as Rules Review Commission Counsel at the North Carolina Office of Administrative Hearings.

William B. Wallace appointed to serve as a Deputy Commissioner Effective March 13, 2023

Wallace began practicing workers' compensation law in 1998, and he has represented both plaintiffs and defendants in workers' compensation cases. He is a North Carolina State Bar Board Certified Specialist in workers' compensation law and a North Carolina Dispute Resolution Commission certified mediator.

Elias W. Admassu appointed to serve as a Deputy Commissioner Effective February 27, 2023

Admassu brings considerable workers' compensation experience to the Commission, having litigated claims before the Industrial Commission from 2009 through 2020 while representing employers and insurers.

Phillip A. Baddour, III reappointed to the Full Commission

Governor Roy Cooper has reappointed Philip A. Baddour, III to serve a second six-year term as a Commissioner on the North Carolina Industrial Commission beginning May 1, 2023, subject to confirmation by the North Carolina General Assembly.

Tracey L. Jones is a senior workers' compensation partner and co-leader of the Workers' Compensation practice group at Teague Campbell.