# NC Workers' Comp NEWS

A publication of the North Carolina Association of Self-Insurers

winter 26


## *NC Fares Well in recent Premium Rankings*

Eighteen of 51 jurisdictions in the U.S. had lower workers' compensation premium rates than North Carolina in 2024, according to a widely followed report from Oregon's department of consumer and business affairs. The Oregon Workers' Compensation Premium Rate Ranking is released every two years.

North Carolina continues to maintain its middle-of-the-pack position and indeed improved it marginally in 2024. In 2022, 21 states had lower premium rates, compared to 2020 when 20 jurisdictions had lower rates. Ten years ago, 24 states had lower premium rates than North Carolina.

According to the most recent report, the following southern states had lower premium rates than North Carolina: Arkansas, Virginia, Kentucky, Tennessee, Maryland, and Mississippi. Workers' compensation premium rates tend to be lowest in North Dakota, West Virginia, and Arkansas, while rates tend to be highest in Hawaii, New Jersey, New York, 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 $1.09 per $100 of payroll in 2024. This is the lowest median value since the inception of the study in 1986, and is one quarter of the nation's peak median rate of $4.35, in 1994.

Oregon uses 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.

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. Even so, the report notes, the middle 50 percent of jurisdictions' index rates remain highly competitive with an average difference of just $0.02 between ranks.

Separately, on August 30, 2024, the North Carolina Rate Bureau filed for a decrease of 5.2% from loss costs approved effective April 1, 2024. The new rates became applicable to new and renewal policies on and after April 1, 2025. By industry group, the changes are: Manufacturing 2.6% decrease; Contracting 5.0% decrease; Office & Clerical 8.0% decrease; Goods & Services 6.2% decrease; and Miscellaneous 4.7% decrease.

The National Council on Compensation Insurance also reported continued good news in its 2025 State of the Line Guide. The 2024 calendar year combined ratio for workers' compensation is 86%, a sign of underwriting strength for the system, while the 2024 accident year combined ratio is 99% with prior years continuing to experience downward reserve development. NCCI estimates a redundant industry reserve position of $16B, and reports lost-time claim frequency declined by 5% in 2024, a faster pace of decline than the long-term average.

INSIDE THIS ISSUE

# Exclusivity Doctrine Not Foolproof

*By: Tracey Jones*

The Industrial Commission and Court of Appeals decided a case recently that reiterates how there are ways to get around the exclusivity doctrine under the Workers' Compensation Act.

In ***Nelson v. Smith***, 2025 N.C. App. LEXIS 306 (May 21, 2025) (Collins) (NC Court of Appeals) (Published), the North Carolina Court of Appeals found that the Plaintiff was not estopped from suing his employer for negligence for mold exposure.

**FACTS:**

Plaintiff Erik Nelson was an employee of Cortech Solutions, Inc. Defendants Lloyd T. Smith and Jennifer G. Smith owned the commercial property where Cortech leased office space and were the landlords of Plaintiff's workplace. Lloyd was the President of Cortech and Jennifer was the Secretary and Treasurer. Cortech was one of several commercial tenants who leased office space in the property from Defendants.

Plaintiff was exposed to toxic mold at his workplace over several years, resulting in various health issues. The location where Plaintiff worked flooded approximately 15 times when Plaintiff worked there. Plaintiff developed Lyme disease and other complications. Plaintiff asked numerous times if he could work from home and was denied. Plaintiff paid for an Environmental Relative Moldiness Index test that revealed beyond the highest level of classification Q4 for mold.

Plaintiff filed a workers' compensation claim against Cortech and entered into a compromise settlement agreement for $25,000.00. Plaintiff also signed a general release agreement, wherein Plaintiff agreed to "to resolve all current and future disputes concerning Plaintiff's employment with Cortech Solutions, Inc. along with all of its affiliates and subsidiaries" in exchange for additional consideration.

Plaintiff then filed a negligence claim against Defendants in their capacities as owners of the property and landlords of the workplace. Defendants filed a Motion to Dismiss under 12(b)(1) for lack of subject matter jurisdiction based on the exclusivity provision and 12(b)(6) for failure to state a claim upon which relief can be granted. The parties had a hearing on the issue, and the trial court granted Defendant's motion under rule 12(b)(1). Plaintiff appealed to the NC Court of Appeals.

**HOLDINGS:**

The Court found that the exclusivity provision of the Workers' Compensation Act did not bar Plaintiff's negligence claim against Defendants because Defendants, as owners of the property and landlords of the workplace, are separate entities from Cortech, Plaintiff's employer. Although Defendant Lloyd T. Smith was the President of Cortech and Defendant Jennifer G. Smith was the Secretary and Treasurer of Cortech, Defendants were not acting as Cortech when they engaged in the duties associated with their ownership of the property. Defendants owned and operated the property—where Cortech leased office space—in their individual capacities; they worked for and operated Cortech as a separate business. As in Phillips and Cameron, the allegations in Plaintiff's complaint reveal that Defendants are separate from Cortech, and thus do not show, at this pleading stage of the litigation, "an absolute bar to recovery due to the exclusivity provisions of the Act."

The release agreement does not release Defendants from liability because when acting as owners of the Property and landlords of the workplace, Defendants were not acting in their official capacities within the scope of their employment with Cortech. The Court further found that Defendants were not an affiliate of Cortech.

**PRACTICAL TAKEAWAYS:**

- **For landlords/property-owners:** If you lease space to a tenant employer and an employee of the tenant claims injury due to conditions in the leased space, you should carefully evaluate whether you are acting as an employer (or the tenant's agent) or purely as a landlord. If purely as a landlord, you may not be shielded by the employer's workers' compensation exclusivity bar.
- **For employers:** When entering a settlement or release with an employee under workers' compensation, make sure the release language addresses whether any non-employer entities (landlords, parent companies, affiliates) are covered, if your intention is to release them too. If you don't name them or cover their distinct capacity, those entities may remain exposed.

Nelson v. Smith reinforces that the exclusivity provision of the Workers' Compensation Act does not provide blanket immunity to individuals or entities acting in a capacity distinct from that of the employer. The Court's reasoning highlights the importance of legal distinctions between corporate roles and personal ownership interests, particularly in premises liability contexts. For employers and their counsel, the decision serves as a cautionary precedent: settlement agreements and release language must be drafted with precision to ensure that all intended parties and capacities are adequately addressed.

*Tracey Jones, co-chair of Teague Campbell's Workers' Compensation practice group, is a graduate of the University of North Carolina and Wake Forest University School of Law.*

# *Distracted Motorists fear Distracted Motorists*

Seventy percent of company drivers say they worry about being killed or hurt in a collision, or being held liable for damages, and say they routinely dodge distracted motorists on their work routes, according to a recent survey by Nationwide Mutual Insurance Company.

The survey also found that compared to a year ago, company drivers think other motorists are using their phones more behind the wheel (69%) and driving faster (66%) and more aggressively (70%) today. But nearly 20 % of company drivers admit to being frequently distracted themselves, the most common distractions being GPS systems, cell phone use (calls, texts, social media), eating or drinking, and adjusting the radio or music.

Work pressures may be part of the reason - 53% of company drivers are regularly taking work phone calls and roughly a quarter are reading/responding to work texts or emails while driving.. Another 40% are frequently taking personal phone calls behind the company wheel, according to the survey. Staffing shortages are likely contributing to the challenges drivers are facing, leading to heavier workloads and heightened safety concerns as 4 in 10 drivers say their company is struggling to hire or retain qualified drivers.

Nationwide reports this year's data revealed a 10-point jump across the board in drivers who say staffing shortages have increased their workload (72%), required them to work longer hours (71%), made it harder to meet deadlines (57%), lowered the quality of training (54%) and reduced focus on safety and compliance (49%). Nearly 50% of company drivers say their employer has lowered hiring standards because of a shortage of potential workers and nearly 40% say staffing shortages have had a negative impact on their driving.

Separately, the U.S. Department of Transportation's National Highway Traffic Safety Administration noted total road fatalities in the U.S. remain significantly higher than a decade ago, and America's traffic fatality rate remains high relative to many peer nations. The agency said it is working to form partnerships with law enforcement authorities to reduce speeding, impairment, distraction, and lack of seatbelt use.

Figures released by the traffic safety administration indicate nearly 39,345 people died in traffic crashes in 2024. This represents a decrease of about 3.8% compared to the 40,901 fatalities reported in 2023 and marks the first time since 2020 that the number of fatalities fell below 40,000. The fatality rate of 1.20 fatalities per 100 million vehicle miles traveled was the lowest since 2019, but above the average rate of 1.13 in the seven years before COVID.

Nationwide says more employers are adopting proactive measures such as dash-cam requirements and hands-free driving policies. Specifically:

- 84% of company drivers have a dash cam installed in their work vehicle – a 29-point year over year increase
- 44% of company drivers report their employer enforces a hands-free driving policy and monitors their cell phone usage while driving – a 10-point increase from last year.
- 71% also report their employer uses continuous motor vehicle record monitoring

"The sharp rise in dash cam usage and hands-free policies sends a clear message: employers are serious about tackling distractions and protecting their drivers," said Mark McGhiey, risk management and client services leader at Nationwide. "With at least 1 in 5 drivers admitting to frequent distractions behind the wheel, and the industry's belief that this number may be even higher, it's clear that policy alone isn't enough—consistent driver engagement and training is crucial to turning these efforts into safer roads for everyone."

Nationwide's survey found also growing consumer support for telematics tools like dashcams and AI-enabled monitoring systems. Specifically:

- 85% of consumers agree dashcams encourage safer driving practices
- 94% of consumers say dashcams provide valuable evidence during accidents or disputes, including rideshare contexts
- 20% already have dashcams installed, and 60% indicate comfort with AI-enabled dashcams that monitor driver behaviors
- 41% believe using AI-powered dashcams should qualify drivers for lower insurance premiums.

# coming up

**Wednesday, March 25- Friday, March 27, 2026**

**NCASI Annual Conference 2026**

**Holiday Inn Resort Lumina on Wrightsville Beach**

*NC Workers' Comp News* is produced quarterly by the North Carolina Association of Self-Insurers. To be added to our distribution list, please contact Moby Salahuddin, executive director, at mobysal@outlook.com

www.ncselfinsurers.com



NCASI
NORTH CAROLINA
Association of Self-Insurers

*The employers' voice in workers' comp*

# *NC Industrial Commission Update*

**Erin F. Taylor Reappointed to Second Term as Deputy Commissioner**

Taylor was reappointed to a second six-year term beginning October 8, 2025, and will continue her service in the Commission's Charlotte regional office.

Prior to her first term as a Deputy Commissioner, Taylor practiced workers' compensation law in the private sector for over 20 years, with a focus on asbestos-related claims and other occupational diseases. Taylor earned her undergraduate degree from the University of North Carolina at Greensboro and her J.D. from the Campbell University School of Law. She currently serves as the Charlotte Office Liaison with Commission leadership.

**Ashley M. Moore Designated Chief Deputy Commissioner**

Moore, who was designated Chief Deputy Commissioner effective November 1, 2025, will continue to serve as the Commission's Claims Administration Director.

**Email Address for Industrial Commission Hearing Transcript Requests and Questions**

The agency has created a dedicated email address, NCIC@esquiresolutions.com for parties of record to order a hearing transcript in any Industrial Commission case that has not been appealed to the Full Commission or Court of Appeals. Parties of record also should use this email address for any questions related to their hearing transcript requests.

When placing a new order for a hearing transcript, please include the following information in the email:
(1) IC Number;
(2) Case Caption;
(3) Date(s) of hearing; and
(4) Whether or not the hearing was a Medical Motion hearing.

The Commission adds this email address should not be used to request a Full Commission hearing transcript in a case that has been appealed to the North Carolina Court of Appeals.

**Annual Report 2025 Highlights**

| | |
|---|---|
| Workers' compensation cases opened | 56,921 |
| Orders issued on medical motions | 1,437 |
| Deputy Commissioner section hearings held (excluding penalty and contempt) | 613 |
| Penalty and contempt matters docketed for hearing | 955 |
| Total appeals to the full commission | 300 |
| Cases referred to mediation | 8,620 |
| Orders on compromise settlement agreements | 10,872 |
| Overall settlement rate for mediated cases | 70% |
| Forms 26A employer's admission of employee's right to permanent partial disability agreements received | 5,087 |
| Orders/Dispositions on Forms 24 application to terminate or suspend payment of compensation | 1,383 |
| Orders/Dispositions on Forms 23 application to reinstate payment of disability compensation | 219 |
| Cases handled by medical rehabilitation nurses section 28 | |
| Medical bills processed | 434 |
| Fraud cases reported | 21,432 |
| Non-Insured penalties collected FY 2024-25 | $1,327,862 |