

COURT OF APPEALS RULES ON NON-SKILLED ATTENDANT CARE

By Scott Houston – Jardine, Baker, Hickman & Houston

In an industrial injury setting, is the employer required to pay for non-skilled attendant care provided by a spouse? In dealing with this issue of first impression, a divided Court of Appeals affirmed an award issued by the Industrial Commission of Arizona which denied a spouse's request for compensation as a result of providing attendant care to her injured husband. Sabino Carbajal suffered serious head and spinal injuries which ultimately resulted in right hemiparesis and cognitive difficulties. Due to the nature of the residual physical limitations, Mr. Carbajal requires attendant care services to perform functions of daily living which include bathing, dressing, and physical therapy. The attendant care services are paid for by the workers' compensation carrier.

In addition to attendant care services, Mr. Carbajal's spouse prepares meals and administers oral medications. In the late afternoon when Mr. Carbajal returns from a structured daycare center, his wife administers additional medication and feeds him dinner. Mr. Carbajal is provided with an attendant from 6:30 p.m. - 9:30 p.m. each day. After 9:30 p.m., Mrs. Carbajal monitors her husband's oxygen while he sleeps and assists him in using the bathroom during the night.

The medical evidence in the case established that Mr. Carbajal was not capable of living "alone". Dr. Porter testified that the assistance provided by Mrs. Carbajal did not require the use of a licensed healthcare provider or skilled "caregiver". The administrative law judge concluded that the services provided by Mrs. Carbajal were akin to the day-to-day duties assumed by a spouse in

accordance with the marital commitment.

The appellate court affirmed the administrative law judge's findings. The court noted that this was an issue of first impression, and analyzed the issue under A.R.S. Section 23-1062(A). That statute defines the "medical benefits" which are available to an injured worker under Arizona law. The appellate court noted that there is wide divergence between the states that have analyzed this exact issue. In general, the courts have focused on various factors including whether the services are typically performed by a licensed healthcare practitioner, whether the services were performed under medical direction, and whether the injured worker needs "continuous" care. The appellate court relied upon its prior statutory interpretation in *Hughes v. ICA, 188 Ariz. 150 933 P.2d 1218* which held that childcare services were not a compensable medical benefit under the statute.

There was a lengthy dissent filed by Judge Kessler. In the dissent, even Judge Kessler concedes that normal housekeeping functions provided by a spouse which would include cleaning, cooking, washing of clothes, yard work, taking out garbage, and household repairs would not be covered as "other treatment" under A.R.S. Section 23-1062(A).

The appellate court's decision is subject to review by the Arizona Supreme Court. I anticipate that the Supreme Court will seriously consider the Petition given the fact that this is an issue of first impression, and requires statutory interpretation.

THE Examiner

The Official Publication of the Arizona Workers' Compensation Claims Association

The Examiner is published quarterly by the Arizona Workers' Compensation Claims Association, P.O. Box 7072, Phoenix, AZ 85011-7072. All articles appearing in this publication are the opinions of the authors and not necessarily the opinions of the AWCCA or its editors. The AWCCA encourages the submission of new ads and articles, subject to space limitations and editing. Signed letters to the editor are welcome. AWCCA seeks to provide a forum for the free exchange of ideas and opinions.

AWCCA Mission Statement:

The purpose and objectives of this association shall be to promote the general welfare of its members by developing close relationships among those engaged in the handling of workers' compensation claims; to promote cooperation by mutual exchange of experiences and discussions thereon and to educate its members.

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With this, our second issue of the recently revived *Examiner* newsletter, there are still two more issues coming up during the remainder of the 2008-09 meeting year. And, there's still plenty of time to place your organization's ad in the Winter and Spring editions!

The Examiner will continue to be published quarterly and distributed via e-mail to all AWCCA regular and associate members. It will also be available on the AWCCA website at www.awcca.org

Single issue advertising is available at the following rates:

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WORKERS' COMPENSATION: A HISTORY & OVERVIEW

By Jim Gill, Southwest Risk Services

As professionals in the workers' compensation industry, each of us over time has built significant expertise in our particular section of the business. Claims adjusters can calculate an average monthly wage, post a medical reserve and negotiate a lump sum settlement while simultaneously slapping their forehead over the adverse Findings and Award that just showed up in their morning mail. Private investigators can come up with a plausible pretext to talk to a claimant's neighbor as easily as exaggerating their golf score to their buddies at the local pub. Voc rehab consultants can spot a potential LEC a labor market survey away and nurse case managers know which orthopedists are scalpel lovers and which want to try conservative care before considering surgery.

But, with many new adjusters and other industry professionals entering the world of workers' compensation, a lot of newcomers never fully understand how and why the claims they handle fall under different laws than the claims handled by their property/casualty claim counterparts. Even many of the work comp industry's old-timers really don't know where the idea of workers' compensation came from or how the system developed into today's complicated combination of insurance, medicine, law, and a host of other important support services that range from IME companies to language translation services.

SO...HOW DID IT ALL BEGIN?

Today, we often wonder how we ever got to a point where an employer should have to pay medical and lost-wage benefits to a drunken employee who was injured on the job, especially when the employee intentionally violated the employers' substance abuse policy. And, we wonder how an employee can return to work after a back injury, punch his boss in the nose, get fired, and then ask his employer to compensate him for his alleged "loss of earning capacity" because his income was reduced to \$0 due to his uncontrolled temper or his rampant stupidity.

It all started out so simply...

As a result of the 19th century industrialization of America, the country saw a significant increase in workplace accidents. While lifting, pushing, pulling and falling injuries were common in pre-industrial America, mechanization was overtaking the manufacturing and transportation industries. Soon, "man-versus-machine" accidents were on the rise, with "man" usually losing most of those battles. Workplace safety programs were in their infancy and most "labor saving" machines had little in the way of safety guards or shields. The incorporation of safety interlock devices into jobsite machinery design was still decades away. And, there were no OSHA guidelines or inspections to keep employers and employees focused on safe work practices.

Before workers' compensation, the only way injured workers could get their employers to compensate them for medical bills or lost wages was to sue those employers for negligence. But proving that a workplace injury was the result of employer negligence was costly and time-consuming. Moreover, a majority of workplace accidents were usually found to be the fault of someone other than the employer. Oftentimes, accidents were exclusively the result of the injured employee's own carelessness, meaning that the negligence-free employer would have no obligation to compensate the injured worker after an unsuccessful lawsuit. Other injuries were really not the fault of *either* the employer or the employee, meaning that the employer would still prevail in a negligence-based civil lawsuit. Even today, when adjusters review the causes of the claims that make up their caseloads, how many are actually the result of any percentage of comparative negligence on the part of the employer? Was the employer at fault for the warehouse worker's lumbar sprain when he picked up a box and felt a "tweak" in his lower back? Or did the employer negligently cause the knee injury that occurred when the crossing guard tripped over the curb at the side of the road?

Moreover, under the old, negligence-based litigation system, employee-versus-employer lawsuits were

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PRESIDENT'S MESSAGE

By Cheryl Altman, AWCCA President

I would like to thank all of you who attended our first two meetings. Our attendance and membership continue to grow. Many of you have commented on your appreciation of the quality of the speakers so far. I would especially like to thank Jim Gill, our Vice President, who coordinates our guest speakers, brings you this publication, and provides us a monthly meeting place at his office; Tara Shields, our Secretary, who gathers all the reservations, provides our monthly meeting minutes, and compiles the monthly check-in list; Helen Olsen, our Treasurer, who keeps track of our monthly financial status and spent countless hours balancing the books to provide our accountant with the information needed to file our taxes; Donna Anselmo, Bernie Cook, Donell Hewett, Debbie Hill, and Liz Flores, all of whom have contributed their time, ideas and helped with monthly check in.

I would also like to again thank our guest speakers, including Judge Harriet Turney who provided us with

her vast knowledge of mediation, and overall do's and don'ts for litigation, Dr. Carol Peairs and Dr. Stephen Borowsky for their knowledge and presentation of opioid contracts and laboratory monitoring for chronic pain. I know we all walked away with new knowledge and ways to improve our day to day handling of claims.

Our new meeting place, just a few miles from the old one has proved to be an excellent choice. The Hilton Embassy Suites has gone the extra mile to provide us with quality service and good food at a price we can afford.

Your current board has met once a month since May and I hope you can see the results. We promised to bring you change and I know we have delivered. Regrettably, Associate Member-at-Large Erin Finn has given up her position on the AWCCA Executive

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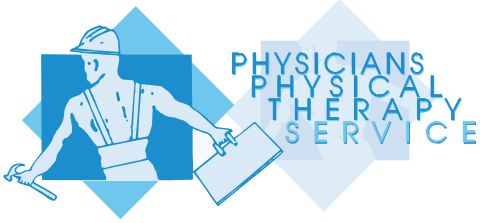
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AWCCA JOB REFERRAL PROGRAM OPEN FOR BUSINESS!

Looking for a job in the work comp industry? Or, are you an employer looking for that ideal, experienced employee? Either way, Joe Strange, the AWCCA's new Job Referral Coordinator, wants to hear from you!

Networking through the AWCCA is a great, cost-free way to match up qualified employees with job opportunities in the Arizona workers'

compensation industry. So, whether you're an adjuster, nurse case manager, voc rehab specialist or private investigator looking for a change of "employment scenery" or, an insurance carrier, TPA or other professional organization hoping to attract a qualified addition to your staff, contact AWCCA Job Referral Coordinator Joe Strange via e-mail at jstrange@transcityins.com or, by phone at 480-483-4323.

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NAME THAT...PERSON...PART 2

By Michael A. Nathe, President, Nathe & Nathe Investigations

Since my last article, I have had the opportunity to speak specifically with AWCCA members working in the varied fields that this diverse group represents and asked specifically, what techniques they have used to remember the names of new business or social contacts. Most of us just end up asking "Who are you again?" but a lot seem to fit generally into the following methods. It seems that for the most part, this is not anything that the members make an intentional effort to do (I didn't find it surprising, however, that the professionals who provide services were more prone to use some type of name remembering techniques than the people who use these services).

The first, and arguably, best way to recall someone's name is quite simply to pay attention to the person that you are being introduced to and then make the effort to concentrate on their name. We tend to focus on what we are going to say during the

upcoming "ebb and flow" of the conversation while being introduced and not recalling an acquaintance's name is due more to the lack of attention rather than a poor memory.

Purposely use the new associates name during the conversation. "Hi Frank. It's nice to meet you. I've got a good friend whose name is also Frank." Then introduce this guy around. "Hey Frank, have you met Chris?" And finally, "It was a pleasure to talk with you, Frank."

Memory clues, such as employment ("Mary from Maricopa") or hobbies (Richard likes guitars so he becomes "Rockin' Richard") are also useful and, these were actually touched upon in our last issue of *The Examiner*. Of the many memory clues, physical characteristics was shown to be the most beneficial (Amy is tall... "Amazon Amy"), especially since a

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Name That...Person...Part 2 (cont'd)

lot of people have the same or similar names. How many Jims, Karens, or Bills do you know floating around in your orbit? Specific traits help to individualize these newly met people and the more distinct the association, the easier it is to recall at a later time.

A very popular way fellow AWCCA members tried to recall names is to rely on nametags. Be aware, however, that a pre-printed name may be different than what the person may want to be addressed as. One year, my tag read “Michael Roast Beef” to apparently let the servers know what I’d wanted for lunch while another read “Lynn Pork” and so on. Ms. “Pork” did not find it funny after a while, although I changed mine to “Michael Beefcake” as I am certain that that is what it was meant to read (if I recall, the tags should have also listed a “No-Doze Dessert” considering the long afternoon schedule). The point is to inquire what the person prefers to be called. “Your tag says Kathy. Is that what you like

to go by?” (Again, a good way to begin to remember the individual's name is to repeat it aloud).

This one sounds kind of creepy but the woman I spoke with swears it works. Once you are introduced to a new acquaintance, imagine their face and write their name down several times, whether you just move your hand as if actually writing the name or physically printing it on a napkin. Be sure you take your scribbles with you, however, rather than leave it behind for someone to find... still seems creepy.

Lastly, when you run into someone whose name you will have forgotten, it is not bad form to ask a second time. Try, at least, to incorporate a fact that you DO remember about this individual in your greeting. “I remember your face well, and that Las Vegas story you told was hilarious, but your name has just escaped me.” If you forget their name a third time, however, you are definitely on your own.



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Fred Brick was a leader, mentor and innovator on a local and national level. He was also a special member of the vocational rehabilitation community for injured workers in Arizona.

In his honor, members of Arizona's workers' compensation industry have created the Fred Brick Memorial Fund which annually presents Fred Brick Rehabilitant of the Year Awards to worthy individuals who have shown outstanding determination in their recovery from on-the-job injuries.

To qualify for the award, an injured employee must have sought rehabilitation therapy and counseling.

Nomination criteria along with the nomination form for the Fred Brick Memorial Rehabilitant of the Year Award can be obtained on the AWCCA website at www.awcca.org by clicking on the "Forms" and then, the "Affiliate Forms" tabs.

Nominations should include a brief narrative about why the nominee should be considered for the award. Individuals nominating candidates for the award are asked to provide a description of the applicant's injuries and the status of their rehabilitation, including an outline of what obstacles the person overcame in order to achieve rehabilitation success and, why the injured worker's efforts, determination and spirit are considered to have been exceptional.

Nominations should be sent to Lisa Clapp, Arizona Vocational Consulting & Forensic Services, Inc. 3120 W. Carefree Highway, #1-150, Phoenix, AZ 85086 or faxed to (623) 742-7270. The deadline for nominations is April of 2009. Nominations are

reviewed by a panel consisting of a therapist, an attorney, a risk manager, an adjuster, a vocational rehabilitation professional, and a nurse.


Generally, the evaluators do not personally know any of the applicants so that objectivity is maintained throughout the selection process. The award recipients are selected solely on the basis of the written applications. The selection committee then prepares bios of each nominee and, the awards are presented at the May AWCCA meeting. The Fred Brick Memorial Fund presents each recipient with a plaque of achievement and a check from the donations collected throughout the year.

The Fred Brick Memorial Fund is a non-profit organization that relies on income from fund raisers such as the organization's annual "Casino Night" (held in February) and, from private donations.

Most recently, Michael Nathe of Nathe & Nathe Investigations was one of those private donators. He donated his winnings from the 50/50 raffle at the October monthly AWCCA meeting to the Fred Brick Memorial Fund. Thank you Michael for getting the new fundraising year off with a bang!!!!

The Fred Brick Memorial Fund would also like to thank all of the contributors who purchased tickets for the raffle of Halloween decorations at the October AWCCA meeting.

For further information about the Fred Brick Memorial Fund, please contact please contact Lisa Clapp at (623) 742-7269 or Debbie Hill at STI Physical Therapy & Rehab at (602) 467-8605.



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LAURA MCGRORY TAKES OVER AS ICA DIRECTOR

Larry Etchechury, Director of the Industrial Commission of Arizona, has announced he is retiring as of November 30th, having worked for the ICA for the past 37 years.

Etchechury was a U.S. Army sergeant during the Vietnam War, specializing in reconnaissance with the 1st Air Cavalry. In 1968, he moved to Arizona from Bakersfield, California to attend Arizona State University. Three years later, he began working for the Industrial Commission, where he was named Director in 1995.

On October 30th, the Industrial Commission named ICA Chief Counsel Laura McGrory to succeed Etchechury as ICA Director. After working for several years as a pediatric nurse, McGrory obtained

her law degree from Gonzaga University in Washington State and, she became licensed to practice law in Arizona in 1988, the same year she began her career at the ICA.

In her new position with ICA, Director McGrory has agreed to be the featured speaker at the AWCCA's January 13, 2009 dinner meeting where she'll discuss her thoughts on future ICA operations, goals and initiatives and, on any pending legislation that may effect the ICA or, the workers' compensation community.

The AWCCA Executive Committee congratulates incoming Director McGrory in her new position and, we extend outgoing Director Larry Etchechury our very best wishes in his future endeavors.



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FOOT AND ANKLE INJURIES IN AN INDUSTRIAL SETTING

By Dr. Aprajita Nakra, DPM, FACFAS

Work related foot and ankle injuries present unique challenges to the astute physician. Even more challenging than the pathology however, is timely return to work. Motivation, financial compensation and chronic pain are all factors which the clinician must take into consideration. Published medical literature, and hence evidence-based medicine, promulgates that if the injured worker is not returned to work following a calcaneus (heel) fracture within one year, the likelihood of them ever obtaining and maintaining gainful employment is markedly reduced. The quandary however, is that post-traumatic conditions such as residual deformity and resulting arthritis preclude the ability to rapidly return to work. Hence it is imperative that an erudite clinician ascertain the appropriate treatment and long term prognosis of foot and ankle injuries in the industrial setting.

The spectrum of work-related foot and ankle injuries is enormous. These injuries can be empirically divided into sprains (soft tissue injuries), fractures, nerve injuries and crush injuries.

Sprains and fractures can be further classified into forefoot, midfoot and ankle. Examples of sprains include turf toe (forefoot), Lisfranc dislocation (midfoot) and ankle sprain. These types of injuries do not show up easily on radiographs and hence, are under-treated. With the advent of advanced imaging modalities, an enhanced understanding of soft tissue injuries has evolved. Coupled with improved surgical and rehabilitation techniques, these patients can experience remarkable recoveries. Simultaneously, the treating podiatric physician, insurance company and case worker need to be cognizant that soft tissue

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Foot and Ankle Injuries (cont'd from page 10)

injuries can lead to short term and long term disability and possible long term sequelae. Foot and ankle fractures include ankle fractures, calcaneal fractures, talar fractures, midfoot fractures, metatarsal and digital fractures. These fractures range from mild with a good prognosis to severe injuries that often cause long term sequelae and disability. As with other lower extremity injuries, even fractures with a good prognosis can preclude return to unrestricted work for a patient who must spend a substantial amount of the work day standing/ambulating on his/her feet. As such, these injuries demand an individualized approach tailored to the severity of the fracture and the patient's work responsibilities. Clear and prompt communication between all members of the multidisciplinary team

(podiatric physician, insurance company, caseworker, physical therapist etc.) can increase the likelihood of return of the employee to the workforce.

Nerve injuries to the foot and ankle in the industrial setting can result from several mechanisms and are frequently unrecognized. Mechanisms include repetitive trauma resulting in overuse syndrome and peripheral entrapment syndrome. In the lower extremity, tarsal tunnel syndrome is an example. Other mechanisms include nerve transaction (due to a direct laceration or indirect laceration caused by an associated fracture), crush injury (compression under a heavy falling object or crushing under a heavy

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Workers' Compensation: A History & Overview (cont'd from page 3)

clogging the country's civil court dockets. And, even though employers were winning most employee-generated civil lawsuits, when they did lose, the often lost big. In any employee-generated civil suit, there was always the potential for a very large verdict payable to a worker who was injured so seriously that they could never work again. Further, the contentious civil litigation system created significant friction between employers and employees.

Recognizing that the existing, negligence-based tort system was an ineffective way to compensate injured workers and to get them healthy and back to work, American businesses and workers agreed that a less adversarial system would benefit everyone. So, by the early 1900s, individual states began enacting legislation designed to compensate injured workers through a “no-fault” system which we now know as workers' compensation.

The original trade-off between employees and employers started out simple enough: Injured workers would no longer have to prove that their employer’s negligence caused their injuries in order to get compensated for their medical bills and wage loss. In return, however, workers' compensation coverage would be the employees' “exclusive remedy” against their employers, meaning the employees would give up their right to sue. And, the amount of money that employers would have to pay in compensation would be limited. That underlying philosophy is the basis for capping workers' compensation indemnity benefits. In Arizona, it's the basis for our maximum average monthly wage and, for the medical fee limitations on services outlined in the ICA Physicians' Fee Schedule.

New York enacted the country's first workers' compensation law in 1910, although it was initially found to be unconstitutional. A year later, Wisconsin enacted the first permanent workers' compensation insurance law in the U.S. One year after achieving statehood, Arizona's legislature adopted our state's first workers' compensation law in 1913 and, by 1920, similar laws were in place in all but eight states. By 1949 all states had enacted “no fault” workers' compensation laws that compensated injured workers for their medical bills and, for a portion of their wage loss. In return for those benefits, workers gave up the right to sue their employers for injuries that were caused by the employer's negligence in all but extreme circumstances.

Workers' compensation statutes have gone through several changes over the years, with more classes of workers being covered over time. Early workers' compensation laws exempted agricultural workers, domestic servants, many railroad workers in interstate commerce, and in some states, workers in “non-hazardous” jobs. In 1972, states began to amend their laws to meet performance standard recommendations from the National Commission on State Workmen's Compensation Laws and, many states expanded employee classifications to apply to employee classes not previously covered. Some states still provide workers' compensation exemptions for employers with fewer than 3 to 5 workers or, for employees with minimal earnings beneath a certain dollar threshold. However, 90% of American employees are currently covered by workers' compensation insurance.

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President's Message (cont'd from page 4)

Committee for personal reasons. She has been a valued Executive Committee member for many years and will be greatly missed. We hope she will be able to come back in the future. This leaves an Associate Member-at-Large position open. Anyone interested in this position please contact me for more information.

Lastly, I encourage you all to attend our Holiday in

New York Party on December 9th Sam Lloyd and his committee are hard at work to bring you an evening to socialize, have a nice meal and hopefully take home a door prize or two. Thank-you Sam and all those on the committee for your hard to make this event possible.

Have a wonderful holiday season and we'll see you at the party.

SAVE THE DATE!

Don't forget...the **AWCCA Spring Seminar** is scheduled for **FEBRUARY 13, 2009** and, the annual **AWCCA Golf Tournament** is scheduled for **MAY 8, 2009**.

Mark your calendars...more to follow in upcoming issues of *The Examiner!*

Workers' Compensation: A History & Overview (cont'd from page 12)

Although most workers' compensation laws have evolved differently in each of the 50 states, eventually, the U.S. Congress enacted the Longshoremen's and Harbor Workers Compensation Act to provide coverage for certain maritime employees and the Federal Employees' Compensation Act to protect U.S. government workers.

THE CURRENT SYSTEM

In many states, employers can purchase workers' compensation coverage from private insurance companies or from state-run or state-sanctioned agencies known as "state funds". The State Compensation Fund of Arizona was founded in 1925 with a \$100,000 loan from the Arizona State Legislature. That loan was paid back to the state by 1938 and, from 1925 to 1968, the State Compensation Fund of Arizona was administered by the Industrial Commission. Currently in the U.S., state funds compete with private insurers in 14 states and, in four "monopolistic" states, the state is the sole provider of workers' compensation insurance. West Virginia, formerly a monopolistic state, is now privatizing its system.

In some jurisdictions, state funds function as the insurer of last resort for employers who are unable to obtain coverage in the open market, usually due to poor loss history. Texas is the only state where workers' compensation coverage is truly optional. Approximately 37 percent of Texas employers are so-called non-subscribers that have opted out of the work comp system and, that can be sued by

employees for failure to provide a safe workplace.

Of course, many large employers or public entities forego the purchase of workers' compensation insurance, choosing instead, to finance their own employee injury benefits through self-insurance. Those employers usually protect their assets by purchasing reinsurance coverage for catastrophic losses or losses in excess of a specific threshold.

According to data in the 2007 November/December issue of *Workers Compensation Policy Review*, in 2005 nearly 51 percent of workers' compensation benefits were paid by private insurers, with about 20 percent coming from state funds, nearly six percent being paid by federal programs and, with just under 24 percent being paid by self-insured employers.

COSTS TO EMPLOYERS

Private-sector employers paid an average of 0.5 percent of their payroll for workers' compensation coverage back in the mid-1950s. Figures in the November/December 2007 *Workers Compensation Policy Review* estimated average workers' compensation costs as a percentage of payroll at 1.75 percent in 2004 and, at 1.70 percent by 2005.

From 1994 to 1999, workers' compensation premiums declined each year by an average of more than 5 percent, with a generally favorable workers' compensation insurance environment drawing more insurers to the marketplace and pushing down rates. With premium discounts being offset by high investment income in a strong economy, premiums

LETTERS TO THE EDITOR

Do you have an idea for an Examiner article? Wanna suggest a speaker or topic for our monthly dinner meetings or for our seminar? Do you have suggestions on how we can improve the AWCCA? The Examiner welcomes Letters to the Editor! Please direct letters via e-mail to Jim Gill at: jgill@berkleyrisk.com or mail them to: **Editor: The Examiner, c/o AWCCA, P.O. Box 7072, Phoenix, AZ 85011.** Please include your name. Anonymous letters will not be published.

Workers' Compensation: A History & Overview (cont'd from page 14)

dropped by nearly 39 percent over the six-year period. Beginning in 2000 however, premiums began to rise again with the return of a hard insurance market, when the demand for affordable work comp coverage exceeded its availability. With the weakening economy of 2007, the market softened once again and premiums began dropping.

CLAIM COSTS

Within today's workers' compensation industry, many adjusters devote significant time and resources toward reducing indemnity exposures. Efforts to identify malingerers and to deny fraudulent claims are a primary focus, with surveillance companies, voc rehab consultants, nurse case managers and, of course, attorneys all being included in the battle. Interestingly, in the late 1980s, indemnity costs did make up the largest part of the country's workers' compensation exposure. Indemnity payments (which, in Arizona include TTD, TPD, PPD and LEC benefits) represented 55 percent of America's total work comp expenditures in 1986. However, by 1996, medical costs comprised the largest work comp exposure, with indemnity payments representing only 48 percent of losses. Due to the continued rise in the country's medical costs, by 2007, indemnity payments accounted for only 41 percent of total workers' compensation claim dollars.

Due to employers' increasing focus on jobsite safety, and, due to technological advances in ergonomics and machine safety, the number of claims filed (claim frequency) has been dropping steadily throughout the country. Interestingly, lost-time

claims dropped by 52.3 percent from 1991 to 2006. Unfortunately, with the escalating cost of medical care, the average cost of each submitted claim continues to increase.

Commercial workers' compensation insurance companies measure financial success in part, based on their "combined ratio" (the percentage of each premium dollar spent on claims and expenses). A combined ratio of 105 means that, for every dollar of premium a company brings in, it pays out \$1.05 in claims and claim expenses.

By 2007, the U.S. work comp industry's calendar year combined ratio increased to 99 (compared to 93 in 2006). That means workers' compensation insurers, on average, were paying out 99¢ in benefits and claim expenses for every \$1.00 in premium they collected, providing an underwriting profit of only one paltry penny on the dollar. Fortunately, investment income and better profitability in other coverage lines can sometimes offset a commercial carrier's anemic underwriting results in its work comp business.

One factor pushing up workers' compensation costs is attorney involvement. Originally, workers' compensation programs were designed as "no-fault" systems that were intended be largely free from litigation. However, the system has grown increasingly contentious over the years and, most states now have volumes of case law in which the courts have used litigated cases to significantly broaden the scope and applicability of the original

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Workers' Compensation: A History & Overview (cont'd from page 15)

workers' compensation statutes. According to 2007 figures cited by the Insurance Information Institute, attorney involvement increases claim costs by 12 to 15 percent. However, because claimants have to pay their attorneys' fees, there is generally no net gain in the actual amount of indemnity benefits received by the injured workers. In most states, overall attorney involvement is seen in 5 to 10 percent of all workers' compensation claims, although attorney involvement runs as high as 20 percent in states with a greater number of disputes and, in about one third of claims involving serious injuries.

With its roots planted firmly in fields of cooperation, compromise and good intentions, American workers' compensation insurance has grown into a system that

covers injuries, accidents, medical conditions and claim scenarios probably never anticipated by legislators who began enacting work comp laws nearly 100 years ago, before asbestosis and HIV existed, before the treatment and frequent litigation of "repetitive motion injuries" would become a cottage industry and, before people would have thought to relate diseases like colon cancer to a firefighter's work activities. But, with escalating medical costs taxing the private health insurance system, there's every reason to believe that more and more people will look toward liberal judicial interpretations of work comp statutes to further expand on a employee/employer "trade-off" that started out so simply almost a century ago.

AWCCA WEBSITE CHANGE

As of October 28, 2008, the AWCCA's new web address is www.awcca.org.

The change was made due to increased pricing for a renewal of the old www.awcca.com website address.

Please remember to make the change in your Internet Explorer "bookmarks"!

Foot and Ankle Injuries (cont'd from page 11)

piece of equipment running over the patient's extremity), stretch (most commonly seen with an inversion ankle injury), ischemic neuralgia (due to vascular injury or prolonged compression secondary to compartment syndrome) and adhesive neuralgia. Nerve injuries have a high incidence of chronic pain and physical impairment. Many studies have shown improved outcomes and improved quality of life for patients who return to work in a timely manner.

Crush injuries to the foot and ankle invariably result in soft tissue and skeletal injury that often requires complex surgical reconstruction. These injuries occur commonly in the industrial setting. Some of the most pervasive problems following crush injuries

are the morbidity associated with chronic pain, nerve dysfunction, stiffness of the foot and ankle and sympathetically mediated pain syndromes. As such, prompt and appropriate treatment strategies including skeletal stabilization and early soft tissue coverage is of paramount importance. All the above-mentioned foot and ankle injuries are described with broad brush strokes; treatment algorithms have to be modified to suit individual patients. For the podiatric physician, the reality of dealing with the workers' compensation system can present many challenges and frustrations. Yet the reward of being able to care for someone injured and getting them back to work can be exalting.

YOUR LOCAL LABOR MARKET UPDATE

by Erin Welsh, MA, CRC – Arizona Vocational Consulting & Forensic Services, Inc.

What is your labor market IQ? I'm sure the majority of hard working workers' compensation adjusters just don't have the time and effort to put energy into following trends with your local labor market and throughout the state of Arizona. Well this is my specialty so sit back, relax, prop up your feet on your desk, pop some popcorn and get ready to be enlightened!

The following are current statistics compiled from various online resources available to all, but known to few.

DID YOU KNOW:

- The minimum wage will increase by 35¢ per hour, going from \$6.90/hr to \$7.25/hr as of January 1, 2009.
- The maximum average monthly wage will increase from \$3,000 to \$3,600 as of January 1, 2009. This will significantly increase LEC entitlements.
- Yuma County has the highest seasonally adjusted unemployment rate at 17.4% in September of 2008 up 3.2% from September of 2007.
- Maricopa County's seasonally adjusted unemployment rate is at 6.1%, up 1.4% from September of 2007.
- The Arizona Department of Commerce, Research Administration's updated forecast projected a continued loss of non-farm jobs for the calendar year 2008-2009 forecast period with a decrease of more than 47,000 jobs (-1.8%).
- A Brazilian-based commercial jet manufacturer is opening a hangar at the Mesa Airport, and 60 new jobs will be created over the next 5 years.
- The top 25 companies with call center jobs employ a combined 37,567 employees in Maricopa County. This equates to many customer service positions which are great entry level jobs for someone with a high school diploma and any sort of customer service experience. Most companies provide paid training.
- ASU is preparing to lay off 200 or more faculty associates as it braces for more state budget cuts. This means most adjunct faculty positions which again, are great places for our injured workers to find employment if they have a bachelor's degree or have gained expert knowledge of their unique field of employment, such as firefighters.

How does this information impact your time loss claims? Please contact any vocational consultant of your choice and we can help. The average monthly wage increase alone will result in many more questions and opportunities for you to let us do our job!