North Dakota Workers’ Compensation

A Historical Overview for the Legislative Review Committee
Terms that WSI uses

- **TTD---Temporary Total Disability**
  (wage-loss replacement when an injured employee is unable to work temporarily)

- **TPD---Temporary Partial Disability**
  (partial wage-loss replacement when an injured employee cannot fully return to work)

- **PTD---Permanent Total Disability**
  (wage-loss replacement when an injured employee cannot return to work)

- **Supplementary Benefits or “Sups”**
  (wage-loss benefit modifier for PTD beneficiaries or COLA after a specified waiting period)
More Terms

- **COLA**--- Cost of Living Adjustments
- **SAWW**---State’s Average Weekly Wage (calculated by Job Service North Dakota, it is currently $567 and will rise to $593 on July 1, 2007)
- **AWW**---Average Weekly Wage of the Injured Employee (wages an injured employee was earning at the time of disability)
- **PPI**---Permanent Partial Impairment Awards (a one-time cash award based upon an injury severity rating system)
More Terms

- **ABP---**Additional Benefit Payable
  Post-retirement benefits that are given to injured employees upon their presumed retirement from the system to compensate for the lost contributions to social security retirement.

- **Death Benefits**
  Wage-loss benefits paid to a surviving spouse and/or dependents based on the deceased worker’s wages and capped at $250,000 (additionally there is up to a $20,000 Guardian Scholarship for each surviving dependent and spouse)
More Terms

- **Vocational Rehabilitation**
  - Vocational planning and rehabilitation includes wage-loss and school costs if appropriate.
  - The goal is to return an injured employee to the workforce as rapidly as possible.
More Terms

- **PRB---Post Rehabilitation Benefit.**
  These are partial wage-loss benefits for injured employees who have completed retraining programs and progress in their rehabilitation to “full-time” employment. These benefits can extend up to one year.

- **CAT Claims---Catastrophic Injuries.**
  These are employees with the most severe injuries including paraplegia, quadriplegia, amputees, total blindness or severe closed-head injuries.
Issues and Results of Debates

WSI is an Insurer of Work-Related Injuries

- Persistent conditions, injuries, diseases
- Repetitive motion
- Aging workforce
- We are not a general healthcare insurer
- We are not a social welfare agency
Issues and Results of Debates

**WSI Pays for Wages Lost Due To Compensable Condition**

- 66 two-thirds percent of gross wages
- Dependency Allowances of $10 per week per dependent
- The maximum weekly benefit is capped 110% of the SAWW which is currently at $653 per week as of 7/1/2007
- Bad policy to pay injured employees more to be off work than on work
Issues and Results of Debates

Injured Employees Will Return to Work

- Following injury, WSI pays wages and medical benefits
- The primary objective is to return employee to work
- Only proven method is using compliance incentives and consequences
- Best outcome is the one with the least amount of intervention as possible
Issues and Results of Debates

The Fund is NOT a Retirement System

- The age at which you either draw social security retirement (SSR) or when you are fully eligible and able to participate in SSR, your wage-loss benefits end.

- ABP (Additional Benefit Payable)—post-retirement benefit, begins to cover any anticipated losses from the lack of payments into the social security retirement system.
Medical Benefits are Provided for Compensable Conditions

- WSI must effect the best, most cost-effective medical treatment in all cases.
- Essentially WSI is a managed-care system for both treatments and prescriptions.
False Statements or False Claims to Gain Benefits is Unlawful

- If fraud is determined, no more benefits on the claim, either medical or wage-loss will be paid.

- There are criminal consequences possible as well for employers, employees and medical providers.
Issues and Results of Debates

**Attorney Fees Payable if Successful**

Injured employees’ attorney fees are payable only if successful and only to established caps.
One System, Three Benefit Structures

Pre-1995

1995-2006

Post-2006
Pre-1995

- No retirement presumption (benefits for life)
- No caps on duration of TTD
- 10-year waiting period for SUPS
- SUPS paid up to 60% of SAWW
- No TPD Caps
- False claim statute had no teeth
- Vocational statute had little teeth
- Attorney fees paid win or lose, no caps
- Hearing Officers non-law trained
1995-2006

- Retirement Presumption and ABP benefits
- No cap TTD
- 2 strikes in Vocational Rehabilitation
- False statements closed claim for life
- SUPS shortened to 7 years but paid based on AWW
- Medical manage care implemented
- TPD capped at 5 years
Post 2006

- TTD capped at 2 years
- Retraining now optional
- 3-year waiting period for SUPS
- Due to TTD cap, Vocational Rehabilitation has more teeth
- Expanded benefits to the most severely injured
- Changed definition for PTD to objective standard
2007 Legislation

- **HB 1038**
  - Provides $100,000 lifetime benefit for vehicle purchase or adaptation
  - Alternative ABP calculation
  - Surviving spousal benefits in death claims
  - Changing to revolving loan fund
  - Shortens COLAs for supplementary benefits
2007 Legislation

- **1411**
  --Provides $100,000 lifetime benefit for vehicle purchase or adaptation for certain PTD claims

- **1140**
  --Provides an annual lump-sum inflationary adjustment for long-term for temporary partial disability cases
Areas of Concern

- Over time legislation erodes
- Constant challenges and tests
- Expose or create openings or loopholes
- Enforcement changes to meet those expansions
Attorney Fees

- Available if injured employee wins
  -- Capped at 20 percent
  -- Or caps set by rule
  -- Since 1995

- *Rojas* case 2006 ND 221
  -- 65-02-08 in place since 1995
  -- 28-32-50 allows fee cap to be exceeded based on “justification test” by District Court
Challenges to 5 year Cap on TPD

- **65-05-10**
  - 5-year cap but WSI may waive cap if injured employee a) is released less than 28 hours per week and is working or b) has a catastrophic injury

  --Recent cases have shown a concerning trend
Concerns with Office of Administrative Hearings

- Injured employees waiting too long for decisions
- Costs rising
WSI Hearings Held

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<td>2007 (proj)</td>
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Approximate Avg Cost of Hearing

- 2001: $2,651
- 2002: $3,772
- 2003: $2,702
- 2004: $3,320
- 2005: $3,934
- 2006: $5,089
- 2007 (proj): $4,982
OAH Average Hours/Hearing

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