

# Workers' Compensation Update

A NEWSLETTER OF THE IDAHO INDUSTRIAL COMMISSION CLAIMS & BENEFITS DEPARTMENT

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## Commissioner Baskin Elected Chairman



Commissioner Thomas P. Baskin III was elected Chairman of the Industrial Commission by the Commissioners effective January 1, 2013 through December 31, 2014. Biannually, the Commissioners rotate the Chairmanship of the Commission. We would like to thank Thomas E. Limbaugh for his excellent performance as Chairman of the Commission these past two years, and we look forward to Commissioner Baskin's term as the new Chairman.

## Date-Stamping of Electronic Claims Documents

Date-stamping is addressed in IDAPA 17.02.10.051.04, stating: *"Each of the documents listed in 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office."*

The items listed under 051.02 include the First Report of Injury, copies of medical bills, time-loss computations, and medical reports. The topic of 051.03 is "Correspondence". The instruction provided in that section is that *"All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices."* While the substance of that rule addresses only outgoing correspondence, which certainly need not be date-stamped, the fact that this section is referenced in 051.04 leads to the obvious conclusion that all incoming correspondence is to be date-stamped.

The open question now being considered by the Commission is: *How is this to be effected and documented in a paperless environment?* This can be straight-forward in the circumstance where an electronic document is sent to and received, and stored, on a server at the in-state office. It becomes less clear in the case where a document is sent to an out-of-state central server, where it can be immediately accessed by the in-state office. We are sure there are additional circumstances that need clarification. We would welcome your suggestions on how this might be handled, while allowing the Commission the capability of measuring time frames for the purpose of determining "prompt claims adjusting."

Meanwhile, it remains the case that all hardcopy documents received by or on behalf of the in-state Claims Administrator must be date stamped.

## Handling Periodic Payments Pending Settlement

Approximately a year ago, the Claims and Benefits Department, finding no reason in the rules or by decision to allow the cessation of PPI payments during the pendency of settlement negotiations, began to advise Claims Administrators that PPI payments deemed compensable must continue to be paid during settlement negotiations. After further discussion within the Commission, we offer this clarification:

PPI payments must continue during the course of settlement negotiations, regardless of whether or not claimant's counsel might consent to discontinuance. However, the payments need not continue subsequent to reaching a final agreement on a settlement. This is reasonable, and allows the parties to fix as certain the amounts to be included in the settlement document.

## Update on In-State Adjusting Pertaining to Medical Bill Reductions

The Commission has previously viewed the application of the fee schedule to a medical bill to be an "adjusting decision". Consequently, it was deemed that a reduction was required to be made by, or at a minimum, approved by, an in-state adjuster.

The Commission is now persuaded that such a determination is ministerial, usually as a part of a software package made specifically to comport with Idaho regulations and allow for the efficient and timely payment of medical bills. Consequently, reductions that are made accurately will not be deemed to be "adjusting decisions", and need not be "approved" by an in-state adjuster. However, the determination that any given medical bill is compensable and payable as part of a workers' compensation claim is an adjusting decision, and does need to be made, at some point prior to payment, by an in-state adjuster.

Further, should a disputed bill then enter into the Med Fee Dispute process, it will no longer be deemed to be a ministerial function, and requires decision-making authority to rest solely with the in-state adjuster.

## CIWCS

### CIWCS Courses, Co-Sponsors and Upcoming Courses

The Claims and Benefits Department of the Idaho Industrial Commission offered four (4) courses in 2012, with 3 held at the Commission in Boise, and 1 held at Mountain View Occupational Health Solutions in Idaho Falls. Thanks to Co-sponsors: Tina Akerman, Director of Occupational Health Solutions; Linda Guinn, General Counsel, INL/Battelle Energy Alliance Legal Dept., and to Paul Jones, Lisa Edelmayer and Lisa Evans, INL Occupational Medicine Program.

The Commission will be extending the CIWCS (Certified Idaho Workers' Compensation Specialist) course by an additional ½ day for Advance level attendees for courses scheduled in 2013, starting with the March 19, 20, and 21, 2013 course. This will allow the Advanced level attendees an additional night to study, and then complete the Advanced level test the following morning.

CIWCS courses are scheduled for 2013 as follows:

- March 19, 20, 21, and 22, 2013 in Boise
- June 5, 12, 19, and 20, 2013 in Boise
- August 6, 7, 8, and 9, 2013 in Post Falls, Co-sponsored by Premier Urgent Care/Northwest Specialty Hosp.
- November 19, 20, 21, and 22, 2013 in Boise

Since the first CIWCS course was offered in January of 2002, the Industrial Commission has presented 47 CIWCS courses to 958 attendees with 599 Idaho Workers' Compensation Specialist Certifications issued as of January, 2013.

Previous course co-sponsors include:

- Occupational Health Solutions
- CH2M-WG Idaho LLC
- Kootenai Medical Center
- Clearwater Paper Corporation
- St. Joseph Regional Medical Center
- North Idaho Immediate Care
- Bonner General Hospital
- Gritman Medical Center
- Active Hand and Rehab
- David Christensen, M.D.
- St. Luke's Idaho Elks Rehabilitation
- Northwest Specialty Hospital/Premier Urgent Care
- INL Occupational Medicine Program
- Mountain View Occupational Health Solutions
- INL/Battelle Energy Alliance Legal Department

## TIPS/REMINDERS

### Lump Sum Settlement Templates

The Commission has over the past twelve months developed forms for both defense counsel and claimant's counsel to use in connection with lump sum settlements, to more uniformly convey information about each proposed settlement submitted to the Commission for approval.

The Defense Settlement Summary takes the form of an exhibit to be attached to the settlement document, and provides an accounting of the benefits paid and payable. The Claimant's Attorney Memorandum standardizes the information required under IDAPA 17.02.08, which will be referenced in the Judicial Rules of Practice and Procedure. This document provides information on the issues involved in the representation of the claimant, the benefits obtained, and fees and costs requested.

Both documents are formatted as fill-in forms, and while they are protected, they are not password protected. Consequently, the document can be unprotected to add additional rows as may be occasionally needed, or other edits that may be deemed to be required on a specific settlement.

Both of the documents, and data-filled examples, are available at: <http://www.iic.idaho.gov/attorney/attorney.html>

### "Settled" vs. "Adjudicated"

Claims and Benefits has seen a number of proposed settlements coming through that state, in one manner or another, that the settlement equates to an "adjudication" of the issues. We ask that such language not be included in settlement documents unless in fact the issues have been the subject of a post-hearing decision.

Further, some settlements also contain language to the effect that, in reaching a determination to approve the settlement, the Commission has "...considered all of the pleadings and evidence...". Since a settled claim may have been adjudicated, there may be "pleadings and evidence" submitted, but they are not necessarily germane to a settlement, and the Commission does not routinely consider all that may be contained in the adjudication file. Consequently, it is requested that such language not be included in the settlement.

### Third Party Administrator Changes

Sureties are reminded to notify the Commission when making a change in their in-state Claims Administrator. Notification must be sent to the Commission in writing within fifteen (15) days of the change for each covered employer. (IDAPA 17.02.10.012.03)

### Medical Records / Benefits Tables / Mileage

Medical providers are required to provide the first copy of medical records related to treatment of a workers' compensation claim to the Payor (Insurance Company, Third Party Administrator, Self-Insured Employer, or the Attorney representing one of these Payors) and the Claimant, or his Attorney, free of charge per IDAPA 17.02.04.322.02 (a). If the Commission requests medical reports from the Provider, the records shall be provided within a reasonable time period (as soon as possible), free of charge, per IDAPA 17.02.04.322.02 (e).

The link for the 2013 Idaho Work Comp Benefits table on the Commission website is:

[http://www.iic.idaho.gov/faqs/faqs\\_benefits/ba\\_12\\_comptable.pdf](http://www.iic.idaho.gov/faqs/faqs_benefits/ba_12_comptable.pdf)

The link for the 2013 State mileage reimbursement rates is: <http://www.sco.idaho.gov/> (under #19, table A)

### Out of State Check Waivers

Sureties are required to sign and issue all checks from within the state of Idaho unless they have been granted an approved Waiver by the Commission. Third party administrators should mention this requirement to sureties making application to write workers compensation business in Idaho; it is advisable that sureties contemporaneously apply for a Waiver. This will ensure compliance with the out of state Waiver requirement should a claim occur and benefits be due. (IDAPA 17.02.10.051.07)

### Unacceptable LSS Language

We have noticed an increase in the number of proposed settlement documents that do not limit the release of liability on the part of the surety to the specific injury/accident/occupational disease referenced by the settlement document, nor to workers' compensation. For example, the language may simply state "any and all claims claimant has or may have against employer..." Please be sure settlements submitted to the Commission do contain limiting language in the release of liability section, such as "...claims under the Idaho workers' compensation regulations on account of the injury alleged to have occurred on (date)".

## Recent/Informative Industrial Commission Decisions

*Castaneda v. Crop Production (UAP Distribution) and Insurance Co. of the State of PA IC #08-024772 Filed: April 12, 2012*

The claimant was originally injured on 9-20-07, suffering a left-sided hernia from lifting at work. The claimant underwent a hernia repair on 10-25-07 and returned to full duty work by February of 2008. The claimant sought additional care mid-2008 for complaints of right and left-sided abdominal pain. The employer fired the claimant on 5-8-09 due to misconduct and the claimant sought additional medical treatment on 5-12-09, resulting in surgery to correct a recurrent left hernia on 7-30-09. The surety refused to pay for any additional medical treatment or income benefits occurring after 2007. After a Hearing, the Commission found the left hernia repair on 7-30-09 was related to the original injury in 2007 and the claimant was entitled to medical and income benefits. The 4-12-12 Decision noted that: "Defendants correctly note that CPS terminated Claimant's employment prior to July 30, 2009, for alleged misconduct. Although Claimant's alleged misconduct unrelated to his industrial accident precluded him from work which might have been available with Employer, his 2007 industrial accident causing a recurrent left hernia necessitating surgery precluded him from work which might have been available in the general labor market. Defendants did not offer Claimant suitable employment or establish that suitable employment was available to Claimant in the general labor market during his period of recovery. Under Idaho Code § 72-408 and Malueg, Claimant is entitled to temporary disability benefits during his period of recovery".

*Gerdon v. Con Paulos, Inc. and Liberty Northwest Ins. Corp. IC# 08-019169 Filed: October 15, 2012*

Claimant suffered a complex left ankle fracture in a car accident while a coworker was driving. Claimant also sought treatment for bi-lateral knee pain, weight gain, instability of the ankle, psychological problems, his addiction to pain medications, and lower back pain, all of which the claimant felt had rendered him totally and permanently disabled. After Hearing, the Commission awarded treatment for the left ankle, left lower extremity CRPS, an L3-4 disc herniation, bilateral knee osteoarthritis and thoracic spine symptoms that had healed by the time the Hearing was held on Jan. 30, 2012. The Defendants had vaguely denied liability for medical treatment of these conditions, either due to non-compliance or that the providing physicians were outside the chain of referral of the

claimant's treating physician. The claimant had gained 80 to 90 lbs after this injury, and the surety authorized 2 visits to a nutritionist, who recommended special shakes and foods to help the claimant lose weight. The claimant's wife testified that she was told the nutritionist and food would be covered, and her testimony was found to be credible. The Defendant's had to reimburse the claimant for this expense. Based on MMI and medical opinions against providing narcotics to the claimant from physicians involved in his care in 2010, the surety denied treatment by Dr. Marsh, who was providing methadone and injections, which was helping the claimant. The surety then arranged an IME with Dr. Gary Walker on May 9, 2011, who opined the methadone and treatment provided by Dr. Marsh was helping the claimant improve dramatically, so therefore, Dr. Marsh's treatment, along with the methadone, was medically necessary. The surety continued to deny Dr. Marsh's treatment. Attorney fees were awarded against the surety for their unreasonable denial of Dr. Marsh's treatment and the methadone prescriptions after May 9, 2011 to present.

*Oliveros v. Rule Steel Tanks, Inc. and Advantage Workers Compensation Insurance Co. IC#08-024772 Filed: November 2, 2012*

The claimant suffered a crush injury to the right hand, and after multiple reconstructive surgeries, was left with index, middle, ring, and pinky finger amputations at various levels above the MP joints and an uninjured thumb. The claimant was evaluated by the clinical director, Mr. Lang, of Advanced Arm Dynamics in Portland, OR, who recommended four silicone rubber finger prosthesis and two heavy duty finger protectors at an estimated cost of \$17,814.15 with a life span of 3-5 years on the prosthetic fingers. The claimant's hand surgeon, Dr. Gross, stated the prosthetic fingers would not improve the function of the hand, but would in fact be awkward and impede functional recovery of the hand. The prosthetic fingers were more for cosmetic use only. The surety denied payment for the prosthetic fingers as not medically necessary to improve functional use of the right hand. After a Hearing, the Commission found that Mr. Lang, though not a physician, was qualified under 72-432 (2) to recommend prosthetic care and that the care recommended was necessary per his opinion. However, the Commission found Dr. Gross to be more credible, and therefore found the prosthetics not reasonable. Consequently, the surety was found not liable to provide the prosthetics.

## AWW for Hourly Employees

At a recent meeting of the adjusting community there was concern expressed about the Commission's focus on the Claims Administrator obtaining the correct calculation of Average Weekly Wage for hourly employees. There did not appear to be contention about the fact of the proper method of calculating the Average Weekly Wage for hourly employees; rather, it was the Commission's requests for documentation in support of the proper method without prior notice to interested parties.

Idaho Code 72-419 states, in (4)(a), that the average weekly wage of hourly employees shall be calculated in a manner different from simply accepting the weekly wage listed on the FROI as the product of an entered hourly wage multiplied by an entered number of hours per week. Often in the industry, the correct method of determining the average weekly wage of an hourly employee is referred to as the "13 week" method or the "quarterly" method. The Claims and Benefits Department acknowledges that shifting over the past year to adherence to the method specified by statute, rather than accepting from Claims Administrators the gross weekly wage entered on the FROI, has caused some additional effort on behalf of the Claims Administrator and their client employers as the correct information has been belatedly requested. Consequently, in our review of Summaries of Payment (time-loss claim closing documents) we have continued to generally accept for claims with a date of injury prior to July 1, 2012, the gross weekly wage entered on the FROI. Certainly, we have no expectation that the wage information will be retroactively collected, or that it may even be collectible, if the employer has switched Claims Administrators, gone out of business, etc. However, if it is clear to Commission Claims personnel that the subject employer is still in business, with the same Claims Administrator, and is in an industry that is known to have fluctuating weekly schedules, or high and low seasons, a request for the correct calculation method for the average weekly wage may be made. We would ask your indulgence on those infrequent occasions.

## UPDATED FUNCTIONALITY OF THE COMMISSION WEBPAGE

Upon opening the Idaho Industrial Commission webpage (<http://www.iic.idaho.gov>), please note the new link in the upper left hand corner: "Attorney Information". Here attorneys can find quick links to a number of useful pages, including IC decisions, the Judicial Rules of Practice, Advisory Committee meeting minutes, and various forms.



**Pictured above:** The respective law clerks for Commissioner Limbaugh and Chairman Baskin reenacting the hand off of The Chairmanship.