**WC Foundations**

**Introduction:**

* Welcome to WC Newcomers: Nuts & Bolts
  + WC Industry is a tremendous place to be
* Introduce 3 Major Sections
  + Lay of the Land
  + Foundational Concepts
  + Foundational Techniques
  1. **What is Workers’ Comp?**
* What is Workers’ Comp
  + The Grand Bargain - A Compromise
    - Employee Side
      * Early 1900s, railroads, mining
      * Only way to get compensated was to prove employer negligence & bring lawsuit
      * Expensive and difficult
      * A lot of lawsuits brough, not winning many, felt unfair
    - Employer Side
      * Awards were unpredictable, could put employer out of business
      * Attorney fees and court costs to defend
    - System wasn’t working, needed a solution
  + Compromise to Win-Win arrangement
    - Employee side
      * Gave up ability to sue for negligence, “exclusive remedy”
      * Received Indemnity, Medical, and other Benefits
      * No Fault system
    - Employer side
      * Received exclusive remedy
      * Ability to budget for work comp expenses
  + Other Work Comp Benefits
    - Vocational Rehab
      * Job training for those that can’t return to regular job
      * Laws vary by state
    - Permanency Rating
      * Cash award for loss of permanent use of a body part, limb or organ
      * Amounts vary by state
    - Death benefit
      * Award to spouse of family

**1.2: 50 States and 50 State Laws**

* **Very Brief History**
  + 1908 President Taft Created US Federal Employers Liability Act
    - Designed to protect railroad workers interstate commerce
  + 1911 Wisconsin
  + 1920 42 States
  + 1948 Mississippi
    - First social insurance, political conversation
    - Driver of conversation was ‘value of human capital’
  + 1972 Commission; 2016 National Conversation
* **50 Different States**
  + 45 – “Standard”
  + 4 – Monopolistic
    - Ohio, Wyoming, Washington, North Dakota
  + 1 – Texas
    - Opt-In State
* **Key Laws To Know In Your State**
  + US Chamber of Commerce - Analysis of Workers Comp Laws
  + 3 Laws to Know:
    - Employer or Employee Directed
    - Calculating the Income Benefit
      * % of wages
        + Exp 66 2/3
      * Maximum
        + Exp. $1000
      * Minimum
        + Exp. $200
    - Waiting Period
      * Waiting Period
        + Exp. 3-7 days
      * Retro period
        + Exp. 14 days

**1.3 The Parties Involved**

* Primary Players
  + Employer:
    - “The Insured”
    - “The Risk”
  + Employee:
    - **Person, Not A Claim Number**
  + Insurance Carrier
    - “The Insurer”
    - “Carrier”
    - “Underwriter”
  + TPA:
    - Third Party Administrator
* Carrying the Risk & the Claims Handling Function
  + Grand bargain – ability to budget and transfer risk
    - Transfer risk to insurance carrier, pay premium
  + Claims Handling Function
    - TPA
      * Not insured or insurer, just administer the claims
    - Carrier In House
* **Brokers**
  + Place the risk
  + Insurance contracts, policies, terms, coverage, etc.
  + Additional services
    - Risk management
    - Loss control
* **Medical Providers**
  + Doctors, Nurses
  + Clinics, hospitals, Ambulatory Service Center
  + Medical networks, etc.
* **Attorneys**
  + Defense attorney
  + Plaintiff attorney
* **Vendors**
  + Settlement
    - Structured settlement
    - MSA
    - Professional Administrators
  + Transportation
  + Investigation
  + Case Management
  + Specialty Networks
  + Triage Providers
  + Functional Capacity Testing
* **State Board & Legislators** 
  + Create and administer WC laws in each state
* **Party With Most Control Over WC Costs**
  + Employer
  + Look in the mirror

**1.4 Who, What, Where, and How**

* **Who pays for workers compensation insurance?**
  + Employer
  + Not a state-run program
    - All vendors, medical providers, etc, are paid by employer
    - Claims handlers, carriers, in business to make a profit
  + Varies by structure
    - Self-Insured
    - High Deductible
    - Guaranteed Cost
* **What is covered by workers compensation insurance?**
  + Employee Injuries Are Covered
    - Physical
    - Repetitive
      * Carpal tunnel
      * Tendinitis
    - Occupational
      * Asbestosis
      * Hearing Loss
      * Asthma
    - Mental Injuries
      * Strictly mental generally not compensable
      * Emerging area in work comp
    - In Course & Scope (will cover more detail shortly)
  + Covered as they are hired
    - If come in as a Ford, leave as a Ford, not a Ferrari
    - Big point of opportunity for employers
* **What is not covered by workers’ comp insurance?**
  + Just because injury happens at work, does not mean it’s work related
  + Items to consider: Horseplay, intoxication, refusing safety (states vary)
    - The extent and seriousness of the deviation;
    - The completeness of the deviation, i.e., whether it was commingled with the performance of a duty or involved an abandonment of duty;
    - The extent to which the practice of horseplay had become an accepted part of the employment; and
    - The extent to which the nature of the employment may be expected to include some horseplay.
* **Is workers’ compensation taxable?**
  + No, indemnity payments are tax free
  + Settlements are tax free
    - Interest and dividends are taxed on lump-sum
    - Structured settlement periodic payments are tax free
* **Types of Indemnity Payments**
  + Temporary
    - Total Disability (TTD)
      * Most common
    - Partial Disability (TPD)
      * Part time or a reduced rate of pay, make up the difference
  + Permanent
    - Total Disability (PTD)
      * Paid set number of weeks or life
    - Partial Disability (PPD)
      * Paid to compensate for loss of future earning capacity
* **How Losses are Categorized**
  + Incident Report
  + Medical Only
    - Enhanced Medical
      * $1500+
  + Lost Time
    - Other than Medical Only
      * Including lost time
      * Claims requiring investigation
  + Occupational disease
  + Catastrophic
* **How many cases are fraudulent?**
  + 1-2% pure fraud
  + Up to 39% malingering
    - extend time out of work exaggerating injury

**2.1 How Premiums Are Calculated**

* + Payroll x Rate x Exp Mod x Adjustments = Premium
    - Adjustments: schedule credits/debits, premium discounts, other credits drug-free, etc.; or deductible discount
    - Expectation of losses
  + Actual vs Expected based on loss history
  + Injury management focuses on Losses, Adjustments, & Impact on Exp Mod

**2.2 Compensability**

* Compensability
  + Knowing what is an is not a claim is very important
  + An Injury or an Illness, must arise out of and be in the course and scope of employment
* Two Elements:
  + Arise Out Of
    - **Benefit to Employer.** Causal relationship between the benefit to the employer’s business and the injury
    - **Increased Risk.** Typically the act of employment increases the risk of injury to the employee.
    - Example:
      * Grazed by a stray bullet
        + Auto mechanic vs Gun Range worker
        + Does mechanic working outside have an increased risk to be hit by stray bullet
  + Course and Scope
    - Timing and Location of the injury
      * When and Where did injury occur
    - Example:
      * Send Employee to Staples to get toner & gets in car accident
      * Vs. Employee runs to Staples during lunch hour for daughters school project
    - Tests:
      * Outside of normal work activities
      * Did it benefit the employer?
      * Increased risk of injury?
* Early investigation is key:
  + Document facts of the case immediately
  + Documents don’t forget, people’s stories often change
* Coming and Going Rule & Traveling Employees
  + Coming and Going Rule:
    - Typically not compensable commuting to and from work
    - Commuting between job sites is compensable
    - Once enter parking lot consider on company grounds
  + Travelling employees rule
    - Portal to Portal coverage
    - Injury on commute home from airport would likely be compensable
* Investigation and documentation of facts are KEY!

**2.3 Investigation – Making Good Decisions From Good Information**

* Pay 100% of claims you should and 0% of Claims shouldn’t
  + Good decisions made with good information
  + Need system to consistently & appropriately document correct information
  + It is hard to overstate the importance
    - difference between getting a claim right and missing it
    - difference between a high integrity program and just guessing on a claim
    - lower workers’ comp costs AND better injured worker outcomes
    - how you would want your spouse, or your best friend to be treated in a workers’ compensation claim.
  + Save thousands, if not hundreds of thousands of dollars
  + Be a good person, act with integrity
* Preserve/Document the scene
  + Video
  + Photos
  + Surveillance footage
* Forms
  + Employee
  + Employer
  + Witnesses
    - Open-ended questions or check boxes
  + First Report of Injury (jump to computer)
* Required to Get Back to Baseline
  + Establish baseline prior to hire
  + Physical testing to establish
* Aggravation vs. Exacerbation
  + Worsening of a medical condition
  + Know when to ask for help from medical professional or claims handling team
  + Know where to find
  + AP & ET
    - Permanent and Temporary
    - Both are new claims, but where does the treatment stop?
  + Medical records search

**3.1 Read a Loss Run – 2:40 pm**

* Reading a Loss Run
  + Want to be able to quickly get a feel for how WC is Going
* How to Get A Copy
  + Broker can request copy from carrier / TPA
  + Employer can request directly
  + Length depends on number of claims
* Loss run components:
  + Claim number
  + Claimant name
  + Loss Date
  + Carrier Report Date
  + Indemnity
  + Medical
  + Expense
  + Reserve
  + Paid
  + Recovery
  + Injury
  + Status
  + Body Part
  + Description
* Steps to Reading:
  + Compare your Loss Date to Carrier Report Date.
    - All claims should be reported within 24 hours.
  + Verify claims look accurate:
    - If you see a listing for a claim that doesn’t look familiar, verify that it is your claim. Every loss run is based on data input into the computer and mistakes do happen.
  + Review your open claims for any that should be closed.
    - By having the claims office close claims that should already be closed, you eliminate unpaid reserves and reduce the total cost used in your experience modification factor.
  + Ask yourself for each file, “is the reserve accurate?”
    - Surgery may have turned out better than expected, and the reserves should reflect this improvement. A word of caution, however. Badgering your adjuster on every file is not productive.
  + Subrogation is often overlooked.
    - Anytime a third party is responsible for the injury; the adjuster should pursue recovery. Make sure you are getting credit for the subrogation recoveries.

**3.2 Impact of Late Claims Reporting**

* Lag time is the enemy of workers’ compensation
  + The quicker a claim is reported, the better chance of success
* Hartford Financial Services Study, Year 2000; 53,000 claims
  + Cost compared to reporting in Week 1
    - Week 2: 18% higher
    - Week 3: 29% higher
    - Week 4: 31% higher
    - Week 5: 45% higher
* Kemper Insurance
  + Litigation Rate
    - 0-10: 22%
    - 11-20: 29%
    - 21-30: 34%
    - 31+: 47%

**3.3 Mistakes, Obstacles, & Predictors of Outcomes**

* **Impact of Communication on outcomes and return-to-work.**
* Liberty Mutual Research Institute for Safety - 2012
* Results: - Immediate reporting w/ triage; Positive vs. Negative Response
* Average claim costs $6,619 to $3,913 – 40%
* Average duration 33.5 days to 14.1 days – 58%
* Key negative responses that drive outcomes:
* Not supportive
* Blame
* Anger
* Question
* Encourage not file
* **WCRI: Avoiding Litigation; What Can Employers, Insurers, & State Agencies Do?**
* Fear of Being Fired:
* 2-3x more likely to hire attorney
* Question Legitimacy of Claim;
* 8-18% more likely
* Thought Claim Was Denied;
* 2-3x more likely
* Employer not taking control/Lack of Management Commitment/Reactive approach
  + Employer not taking control
    - “No work until seen by this office”
  + Lack of Management Commitment
    - Financial
    - Emotional
  + Reactive approach
    - Want clear goal and structure/plan to achieve
* Direct vs Indirect Costs
  + Direct: Indemnity, Medical, & Expenses
  + Indirect: OSHA – 2-10x direct costs;
    - Lost productivity
    - Replacement labor
    - Equipment damage
    - Reduce moral, increased paperwork
    - OSHA penalties
    - OSHA Safety Pays Calculator
      * 0-3k: 4.5x
      * 3k – 5k: 1.6x
      * 5k-9k: 1.2x
      * 10k+: 1.1x
* Staffing
  + 500 claims, $10m in WC Costs
    - 1 person in charge
  + 16-20 people staffed in mailroom
* Policy Disincentives
  + Airline
    - 96% OOW 7+ days
      * Optional and full salary
    - Mandatory
      * 4% OOW 7+ days
* Attorney involvement
  + Goldilocks: not too few, not too many
* Confrontational Environment/Lack of Trust/Poor Culture
  + Encouraging not to file
  + Punishing employees who file claims
  + Negative environment for injured employees
* Poor or Zero Communication
  + Don’t hear from anyone
* Poor Hiring & Placement
  + New employees and RTW
  + Physical testing
* Choosing provider solely on price
  + TPA has overworked adjusters
  + Case counts are high, not enough staff
  + Lowest price provider often the most expensive
* Cost of doing business
  + Line of insurance that can have the most impact of any line of insurance