

# NEW YORK STATE WORKERS COMPENSATION CLAIMS

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## About Me

- Marsh Claim Practice
- Upstate NY office – Buffalo
- 20+ years experience handling NY State Workers Compensation Claims
  - Claim Adjuster/Supervisor
  - Healthcare Risk Management
  - Broker Claims Advocate
- NY State Client base
  - NY only
  - National exposures

# New York State Workers Compensation

- Historical challenges
- *“Reform”*
- Current trends

## Historical Administrative Burdens

- Claim Handling Fees
- Forms
  - Paper Form cutoff date May 23,2014
- Hearings
  - Most claims require at least one Hearing
- Claimant Attorney involvement
  - “Volume” business
  - Barrier to closure
    - Settlement
    - Permanency-Loss of Wage Earning Capacity (LWEC)
- Maximum Medical Improvement timeframe

# 2007 Workers Compensation Law Reform

Merriam-Webster Dictionary

## **<sup>1</sup>reform**

*verb* re·form \ri-'förm\  
re·forms

: to ***improve*** (someone or something) by ***removing or correcting faults, problems, etc.***

: to ***improve*** your own behavior or habits

## 2007 WC Law Reform

- Total Disability weekly indemnity benefits are 2/3 of employee's gross average weekly wage (AWW), up to a **maximum** amount based on the injury date.

**\$400** for accidents or deaths prior to 7/1/07 (began 7/1/92)

\$500 for accidents or deaths on or after 7/1/07

\$550 for accidents or deaths on or after 7/1/08

\$600 for accidents or deaths on or after 7/1/09

\$739.83 for accidents or deaths on or after 7/1/10\*

\$772.96 for accidents or deaths on or after 7/1/11

\$792.07 for accidents or deaths on or after 7/1/12

\$803.21 for accidents or deaths on or after 7/1/13

\$808.65 for accidents or deaths on or after 7/1/14

**\$844.29** for accidents or deaths on or after 7/1/15

\*2/3 of the NY State Department of Labor's Average Weekly Wage subject to annual indexing each year on 7/1.

## 2007 WC Reform Benefit rate impact on SLU

- Schedule Loss of Use (SLU) accounts for anticipated future wage loss resulting from residual permanent impairment for an extremity
- Pre 1996 State Physician:  
rotator cuff with surgery generally resulted in 7.5-15% SLU Award  
10% SLU arm = 31.2 weeks x \$400 = **\$12,480**
- 2015 Attending Doctor/Independent Medical Exam  
rotator cuff with surgery generally results in 20-40% SLU Award  
10% SLU arm = 31.2 weeks x 844.29 = \$26,342  
20% SLU arm = 62.4 weeks x 844.29 = **\$52,684**

## 2007 WC Reform Increased Benefits for Capped PPD

### Loss of Earning Capacity

### Number of Weeks Payable

<b>96-99%</b>	<b>525 (10.1 years)</b>
<b>91-95%</b>	<b>500</b>
<b>86-90%</b>	<b>475</b>
<b>81-85%**</b>	<b>450</b>
<b>76-80%</b>	<b>425</b>
<b>71-75%</b>	<b>400</b>
<b>61-70%</b>	<b>375</b>
<b>51-60%</b>	<b>350</b>
<b>41-50%</b>	<b>300</b>
<b>31-40%</b>	<b>275</b>
<b>16-30%</b>	<b>250</b>
<b>1-15%</b>	<b>225 (4.3 years)</b>

\*\*81% or higher LWEC Hardship clause



## 2007 WC Law Reform Loss of Wage Earning – Capped PPD

- Capped PPD/Loss of Wage Earning Capacity (LWEC) for non SLU injuries after 3/13/07
  - ineffective in lowering or controlling costs
  - delays capped PPD awards to extend TTD/TPD
    - Claimant Attorney tactic
  - inconsistent Adjudication by WC Law Judges
- Prompted WCB to issue Subject No. 046-548 on 5/28/13:
  - ☐ [http://www.wcb.ny.gov/content/main/SubjectNos/sn046\\_548.jsp](http://www.wcb.ny.gov/content/main/SubjectNos/sn046_548.jsp)
  - Provided data showing delays in classification post reform
  - Created Specialized WCB Parts to handle PPD claims
  - Specifically noted that possibility of future surgery is not a bar to MMI

## 2007 WC Reform

- Increased Minimum Weekly Indemnity Benefit
  - \$40 effective 7/1/91
  - \$100 effective 7/1/07
  - \$150 effective 5/1/13
  
- Adverse impact on employers with:
  - Part Time employees
  - Minimum Wage
  - Seasonal business

## 2007 WC Law Reform

- Expanded mandatory Aggregate Trust Fund (ATF) payments
  - Mandatory Deposit if PTD/PPD on any claim effective 7/1/07
  - NY State Insurance Fund & Self-Insured exemptions
  - ATF administers Indemnity
  - Medical remains with Carrier/TPA
  - Pressures Adjusters into hasty settlements
  - ATF Deposit is barrier to effective claim handling
  - Adverse Cash Flow implications
  - Specifically excludes mechanism to repay balance to carrier if ATF eventually settles claim below Deposit amount

## Medical Costs

- Existing Medical inflation
  - Utilization vs. Procedure Costs
  - Medical Treatment Guidelines expedite Diagnostic tests & surgeries
- Lack of ability to direct medical care
  - Certified PPO - 30 days
- Lifetime symptomatic medical care
  - Maximum Medical Improvement (MMI) cutoff in other states
- Medical Treatment Guidelines
  - inconsistent WC Law Judge application
  - Still in early stages – variance language
  - Non Acute Pain MTG's

## NY State recent issues

- Electronic Data Interchange (EDI) rolled out Spring 2013
- Payor Compliance Project implemented 4<sup>th</sup> Quarter 2015
- Increased Scheduled Loss of Use (SLU) awards
  - Inconsistent Guideline application and abuse

<u>1996</u>	<u>SLU</u>	<u>SLU</u>	<u>_</u>
Amputation at ankle joint	75%	10%	Meniscus tear
Ankylosis Shoulder joint	80%	15%	Rotator Cuff tear
<u>2015</u>	<u>SLU</u>	<u>SLU</u>	<u>_</u>
Amputation at ankle joint	75%	40%	Meniscus tear
Ankylosis Shoulder joint	80%	40%	Rotator Cuff tear

## 2007 WC Reform Today's Permanency

- Age 47 RN – Knee arthroscopy - Total Incurred \$106,869
- Age 56 Aide - Shoulder arthroscopy - Total Incurred \$59,690
- Age 57 Medical Assistant – Fracture Arm- Total Incurred \$70,975
- Age 58 RN – Knee arthroscopy - Total Incurred \$81,535

