

Understanding Workers Compensation in New York

May 2015

Scott J Lefkowitz FCAS, MAAA, FCA

About Me

- Oliver Wyman Actuarial Consulting
- Office in Melville, NY
- FCAS, MAAA, FCA with 27 Years in Actuarial Field
- Experienced with Workers Compensation Exposures
- 20+ Clients in New York
 - VNS of NY
 - Cablevision Systems
 - Self-Insured Groups
 - Kaleida Health System
 - Schools
 - Public Entities
 - etc.

Where is Melville?

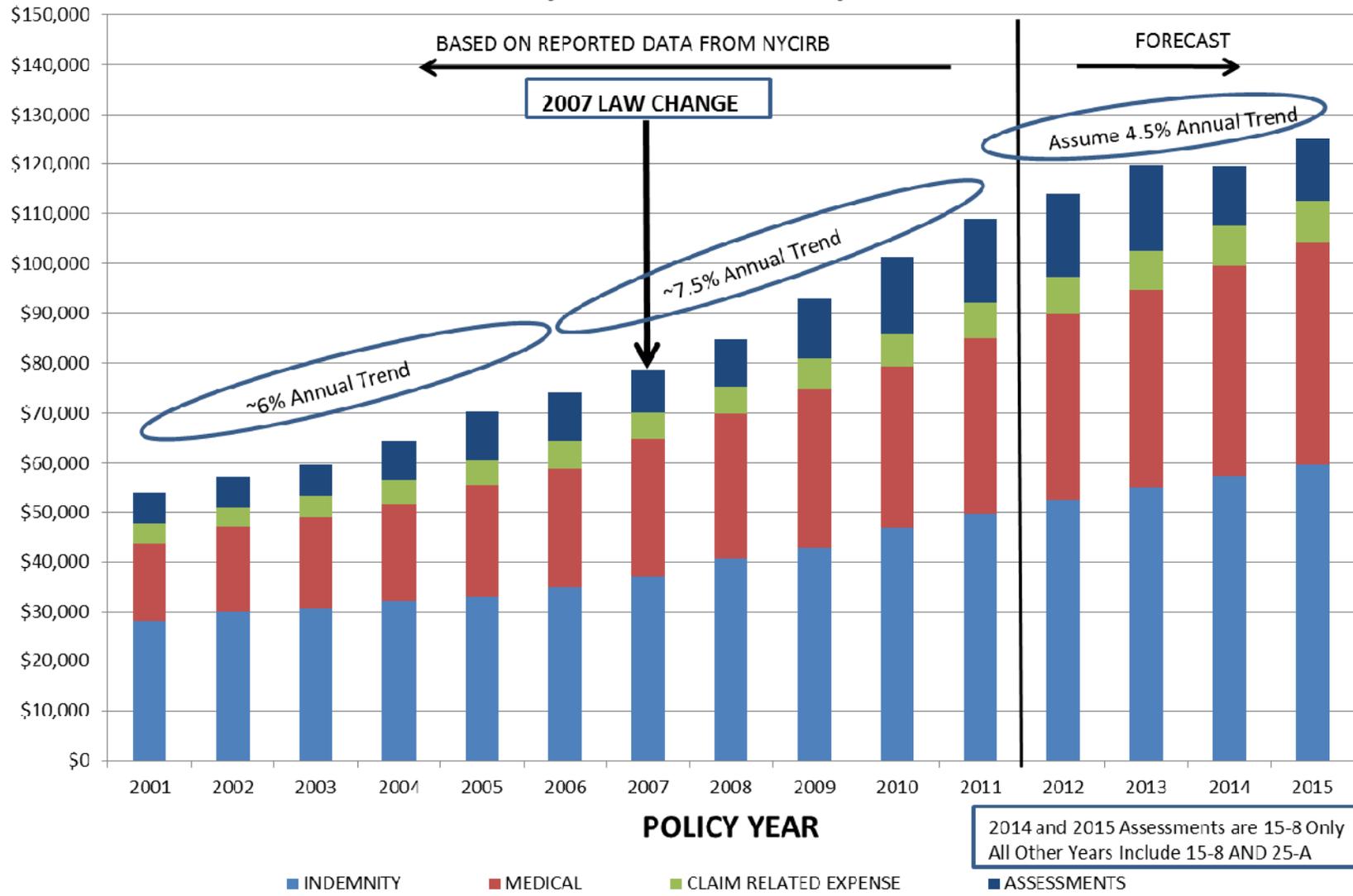


About 35 miles from mid-town Manhattan

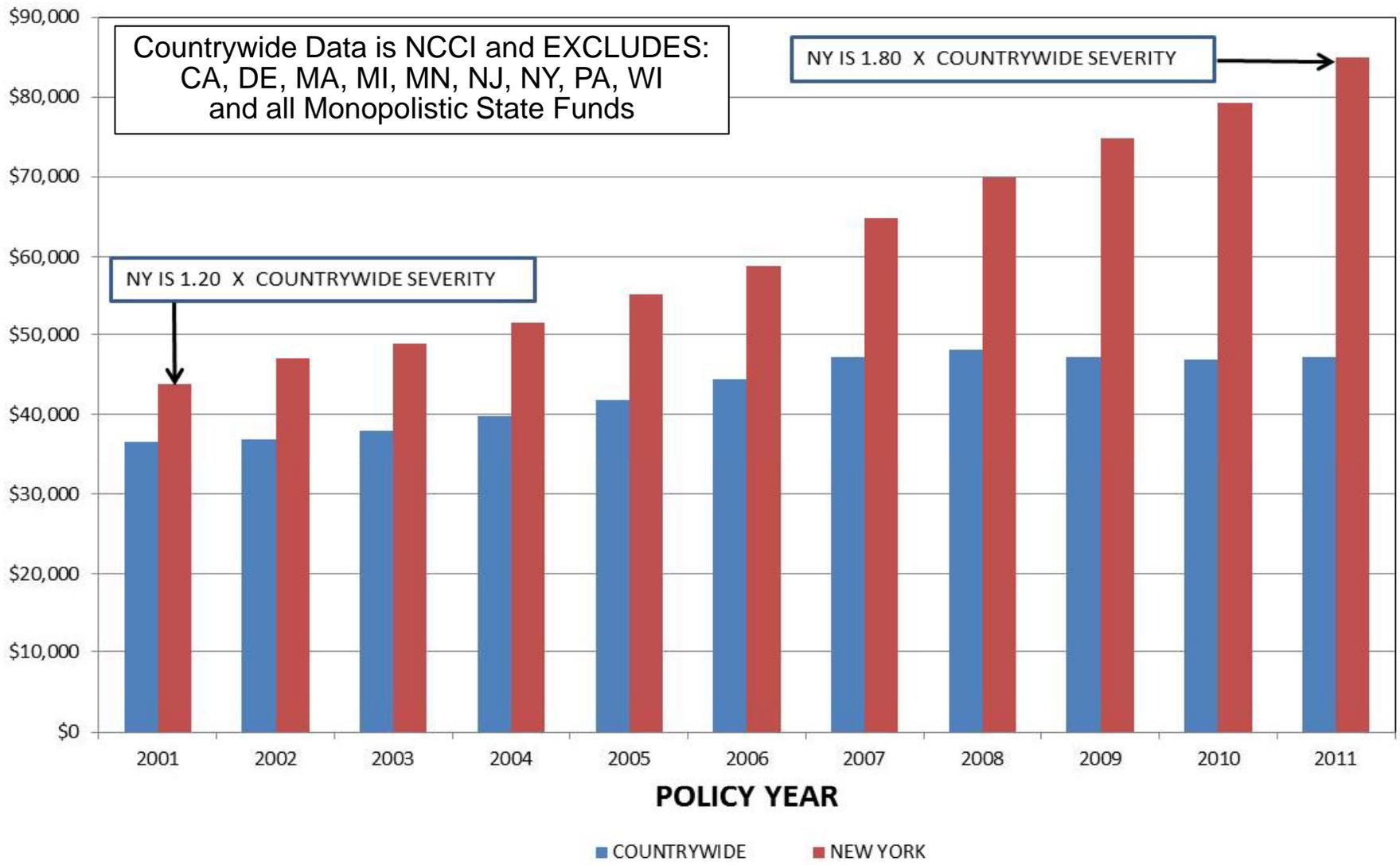
What Are We Going to Discuss?

AVERAGE LOST TIME CLAIM COST IN NEW YORK

Medical, Indemnity, Claim Related Expense, Assessments



LOST TIME CLAIM COST: MEDICAL AND INDEMNITY BENEFITS New York and Countrywide Data



Impact of Including States not in NCCI Countrywide Average Severity

- Average Countrywide Severities will Increase
 - NY Relativity to Countrywide will Decrease at each Measurement
- Minimal Impact on Shape of Graph
 - NY Relativities to Countrywide will Increase
 - Data from 2014 NCCI Statistical Bulletin

	~2007	~2011	CHANGE
CA	56,528	72,272	28%
DE	73,669	108,515	47%
MA	32,449	36,518	13%
MI	38,393	33,797	-12%
MN	41,584	45,599	10%
NJ	48,920	56,147	15%
NY	52,680	72,266	37%
PA	51,202	57,281	12%
WI	31,771	37,379	18%

Note: NY is not published at ultimate values.

NEW YORK CLAIM FREQUENCY

per 100,000 workers

Policy Year	Total Lost Time	Permanent Partial	PP %
2001	1,219	494	41%
2002	1,142	456	40%
2003	1,108	440	40%
2004	1,030	419	41%
2005	988	416	42%
2006	953	425	45%
2007	939	451	48%
2008	927	489	53%
2009	926	509	55%
2010	943	537	57%
2011	941	552	59%
2012	940	570	61%
2013	940	584	62%
2014	940	594	63%
2015	940	594	63%

NEW YORK CLAIM FREQUENCY

per 100,000 workers

Policy Year	Total Lost Time	Permanent Partial	PP %
2001	1219	494	41%
2002	1142	456	40%
2003	1108	440	40%
2004	1030	419	41%
2005	988	416	42%
2006	953	425	45%
2007	939	451	48%
2008	927	489	53%
2009	926	509	55%
2010	943	537	57%
2011	941	552	59%

COUNTRYWIDE CLAIM FREQUENCY

per 100,000 workers

Policy Year	Total Lost Time	Permanent Partial	PP %
2001	1,275	430	34%
2002	1,218	422	35%
2003	1,179	423	36%
2004	1,124	404	36%
2005	1,075	384	36%
2006	1,041	382	37%
2007	996	378	38%
2008	925	369	40%
2009	882	361	41%
2010	874	344	39%
2011	866	329	38%

Countrywide Data is NCCI and EXCLUDES:
CA, DE, MA, MI, MN, NJ, NY, PA, WI
and all Monopolistic State Funds

Impact of Including States not in NCCI Countrywide Average Frequency

- Expectation is minimal impact

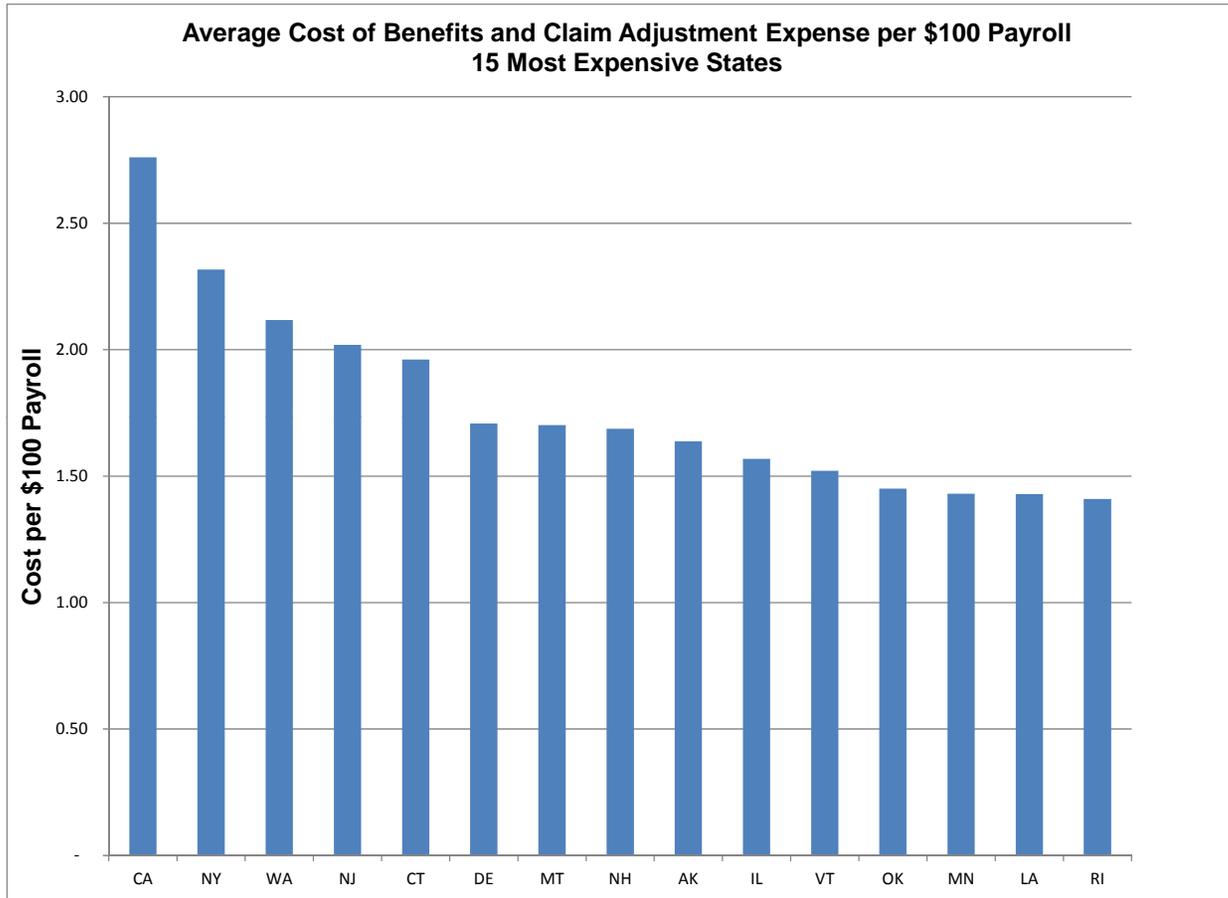
About 2007			
	TOTAL LT	TOTAL PP	PP %
CA	1,420	657	46%
DE	1,074	338	31%
MA	979	212	22%
MI	974	141	14%
MN	1,032	340	33%
NJ	1,202	539	45%
NY	939	451	48%
PA	1,064	265	25%
WI	1,322	468	35%

About 2011			
	TOTAL LT	TOTAL PP	PP %
CA	1,411	707	50%
DE	908	320	35%
MA	933	134	14%
MI	810	99	12%
MN	895	263	29%
NJ	1,106	518	47%
NY	941	552	59%
PA	950	240	25%
WI	1,111	465	42%

CHANGE FROM 2007 to 2011			
	TOTAL LT	TOTAL PP	PP %
CA	-1%	8%	4%
DE	-15%	-5%	4%
MA	-5%	-37%	-7%
MI	-17%	-30%	-2%
MN	-13%	-23%	-4%
NJ	-8%	-4%	2%
NY	0%	22%	11%
PA	-11%	-9%	0%
WI	-16%	-1%	6%

Data is from 2014 NCCI Statistical Bulletin except NY.
 NY is from New York Workers Compensation Rating Board

STATE WORKERS COMPENSATION 2015 COST RANKING



Costs are measured using the same distribution of employee classifications.

Costs are based on the most recently available information for the individual states.

Costs include the second injury fund assessments.

CA includes a negative 10.0% adjustment for anticipated decrease to benefit and adjustment costs.

NY includes a positive 17.4% adjustment for actuarial indicated loss cost change.

Approved Lost Cost Changes by Effective Date in New York

Effective Date	Approved Change	Cumulative Change	
9/30/2007	0.00%	0.00%	
10/1/2007	-18.40%	-18.40%	
10/1/2008	-6.40%	-23.62%	
10/1/2009	4.50%	-20.19%	
10/1/2010	7.70%	-14.04%	
10/1/2011	9.10%	-6.22%	
10/1/2012	0.00%	-6.22%	Filed Increase was +11.5%
10/1/2013	9.50%	2.69%	Filed Increase was +16.9%
10/1/2014	0.00%	2.69%	Filed Increase was +6.8% Actuarial Indication was +17.4%

Loss Cost: Indemnity + Medical + Claim Adjustment Expense

Outline of Discussion

- Conditions Prior to 2007
- 2007 Law
 - The Changes
 - What Actually Happened
- Assessments
- 2013 Law
- Where We Are Today

Conditions Prior to 2007

Conditions Prior to 2007

Benefit Levels had been unchanged since 1992

- Maximum weekly benefit at \$400 per week since July 1, 1992
- Minimum weekly benefit at \$40 per week since July 1, 1992

Conditions Prior to 2007

Claim Frequency Declined from 2001 through 2006

- NY LT claim frequency declined by ~22%
Somewhat greater decline than the countrywide decrease of ~18%
- NY PP claim frequency declined by ~14%
Somewhat greater decline than the countrywide decrease of ~11%
- NY PP as % of LT Claims increased from 41% to 45%
Somewhat greater increase (absolute and percentage) than countrywide increase from 34% to 37%

NEW YORK CLAIM FREQUENCY per 100,000 workers				COUNTRYWIDE CLAIM FREQUENCY per 100,000 workers			
Policy Year	Total Lost Time	Permanent Partial	PP %	Policy Year	Total Lost Time	Permanent Partial	PP %
2001	1219	494	41%	2001	1,275	430	34%
2002	1142	456	40%	2002	1,218	422	35%
2003	1108	440	40%	2003	1,179	423	36%
2004	1030	419	41%	2004	1,124	404	36%
2005	988	416	42%	2005	1,075	384	36%
2006	953	425	45%	2006	1,041	382	37%

Conditions Prior to 2007

Claim Severity Increased from 2001 through 2006

- Average LT claim cost increased 35% in New York
Much greater increase than countrywide increase of 21%

Average Lost Time Claim Costs Policy Years 2001 through 2006 New York versus Countrywide Medical and Indemnity Benefits Only		
Policy Year	New York	Countrywide
2001	43,763	36,580
2002	47,053	36,850
2003	48,852	37,933
2004	51,452	39,788
2005	55,304	41,764
2006	58,919	44,440
5-Year Change	34.6%	21.5%
Avg. Annual Change	6.1%	4.0%

Conditions Prior to 2007

Claim Severity Increased from 2001 through 2006

Reasons for Increase to NY LT Claim Severity

- Larger Shift to PP Claims as Portion of Total LT Claims in NY
NY: 41% to 45%
Countrywide: 34% to 37%
- PP Claims in NY increased in cost materially more than countrywide claims

Permanent Partial Average Claim Costs Policy Years 2001 through 2006 New York versus Countrywide Medical and Indemnity Benefits Only		
Policy Year	New York	Countrywide
2001	90,719	71,258
2002	97,505	68,136
2003	103,666	70,059
2004	107,142	67,170
2005	113,457	69,772
2006	114,395	72,789
5-Year Change	26.1%	2.1%
Avg. Annual Change	4.7%	0.4%

Conditions Prior to 2007

Claim Severity Increased from 2001 through 2006

Reason for Increase to NY PP Claim Severity:

MEDICAL, MEDICAL, MEDICAL

Permanent Partial Average Claim Costs Policy Years 2001 through 2006 New York Component Medical and Indemnity Costs			
Policy Year	Medical	Indemnity	Total
2001	29,917	60,802	90,719
2002	33,035	64,471	97,505
2003	36,647	67,019	103,666
2004	38,436	68,706	107,142
2005	43,714	69,743	113,457
2006	45,186	69,209	114,395
5-Year Change	51.0%	13.8%	26.1%
Avg. Annual Change	8.6%	2.6%	4.7%

Conditions Prior to 2007

Claim Severity Increased from 2001 through 2006

Why Medical – Possible Reasons:

- Average disability rating of non-scheduled PP awards were increasing
- Medical services were being utilized by claimants to achieve a non-scheduled award or to increase the disability rating
- Opinion of some claim administrators was that this activity was likely done to partially offset the low maximum weekly benefit of \$400

Conditions Prior to 2007

PP Claims in New York Were Expensive to Start

Scheduled versus Non-Scheduled PP Claims

Scheduled PP claims provide for benefits for specific durations

Maximum Possible Compensation	
Scheduled Loss of Use Awards	
Member Lost	Weeks of Compensation
Arm	312
Leg	288
Hand	244
Foot	205
Eye	160
Thumb	75
First Finger	46
Second Finger	30
Third Finger	25
Fourth Finger	15
Great Toe	38
Other Toe	16

Scheduled PP claims had not been the problem

Conditions Prior to 2007

PP Claims in New York Were Expensive to Start

Non-Scheduled PP claims were for “duration of disability”
Duration of Disability = Lifetime benefits

Non-Scheduled Indemnity Permanent Partial Claim Costs Pre-2007 Distributions New York			
	As % of PP Indemnity Benefits	As % of Total Indemnity Benefits	As % of Total Benefits
Death		2.5%	1.6%
PT		4.4%	2.8%
Non-Scheduled PP	70.8%	61.3%	39.2%
Scheduled PP	14.3%	12.4%	7.9%
PP Healing Period	14.9%	12.9%	8.3%
TT		6.6%	4.2%
	100.0%	100.0%	64.0%
			Medical as % of Total Benefit Costs
			36.0%

The indemnity cost component of non-scheduled PP claims in NY accounted for **~40% of TOTAL** NY workers compensation benefit costs

Conditions Prior to 2007

PP Claims in New York Were Expensive to Start

New York was one of a small number of jurisdictions with lifetime PP claims

Nevada (currently until age 70)

Michigan (period of wage loss)

Arizona (duration of disability)

FECA (duration of disability)

USL&HWA (duration of disability)

(When passed by Congress, patterned after NYS Act)

Conditions Prior to 2007

Aggregate Trust Fund

- Applied only to death and permanent total disability claims
- Applied only to private carriers
 - Not to self-insureds
 - Not to State Insurance Fund
- Present value of benefits deposited into ATF
 - ATF pays claim or settles
- Impacted small portion (5%) of system costs
 - Death and permanent total disability claims are expensive, but they are only a very small portion of total lost time claims and overall system costs

Conditions Prior to 2007

New York State Special Disability Fund – AKA 15-8

- Five Year Waiting Period
- If accepted, fund will pay a portion or 100% of all benefit costs
- Claim is still responsibility of insurer or self-insured employer
- Once accepted, annual request for reimbursements required
- Funded by assessment process (Prior to 2014)
 - Insurers pay annual assessment based on standard premium
 - Self-insured pay annual assessment based on prior year indemnity payments, prior to consideration of reinsurance recoveries
 - Self-insureds required to maintain balance sheet accrual for future assessments

Conditions Prior to 2007

New York State Reopened Claim Fund – AKA 25-A

- Condition for 25-A Relief
 - Minimum of 7 years have passed since date of loss
 - Minimum of 3 years have passed since last compensation payment
 - Claim for compensation (medical or indemnity) was originally denied and claim is reopened resulting in benefit payments
 - Certain death claims

- If accepted:
 - 25-A assumes responsibility for 100% of all future costs
 - 25-A assumes responsibility for claim management
 - Insurer or self-insurer closes claims

- Funded by same assessment process as Special Disability Fund

Conditions Prior to 2007

Huge Increase to Assessments

	<u>15-8</u>	<u>25A</u>	<u>Other</u>	<u>Total</u>
2001	\$375M	\$60M	\$290M	\$725M
⋮	⋮	⋮	⋮	⋮
2006	\$500M	\$110M	\$378M	\$988M

Reflect much greater utilization of 15-8 and 25-A funds

In 2007, assessment rates were

15-8 18.3% per indemnity dollar or standard premium equivalent

25-A 4.1% per indemnity dollar or standard premium equivalent

These two assessments added over 14% to average benefit costs in NY

$$64\% \times 22.4\% = 14.3\%$$

Conditions Prior to 2007

Other Cost Drivers

- High litigation rate
- Antiquated, complex, inefficient system
- Low settlement rates

Conditions Prior to 2007

Summary

- Low maximum and minimum weekly benefits in place for 15 years
- LT claim frequency declining at rate similar to countrywide average
- LT claim costs increasing at rate greater than countrywide average
 - Driven by increasing non-scheduled PP claims
 - Higher medical costs for permanent partial claims
- Accelerating assessment costs
- Inefficient and litigious system

2007 Law: The Changes

2007 Law: The Changes

- Increase to maximum and minimum weekly benefits
 - Minimum increased from \$40 to \$100 effective July 1, 2007
 - Maximum increased according to following schedule

Effective Date	Maximum Weekly Benefit
1-Jul-07	\$500
1-Jul-08	\$550
1-Jul-09	\$600
1-Jul-10	2/3rds of AWW: \$739.83
1-Jul-11	\$772.96
1-Jul-12	\$792.07
1-Jul-13	\$803.21

- Maximum Weekly Benefit is \$808.65 effective July 1, 2014
- Minimum Weekly Benefit is \$150 (since 2013)

2007 Law: The Changes

- Duration limits on non-scheduled permanent partial claims
 - Eliminates lifetime awards for all but most serious claims
 - 225 weeks to 525 weeks
 - Effective March 13, 2007

2007 Law: The Changes

- Close the Special Disability Fund (15-8)
 - Theoretically, cost neutral
Insurers responsible for all costs, but assessments will decrease
 - In theory, more efficient.
 - Only problem is runoff must be funded.

2007 Law: The Changes

- Expand Aggregate Trust Fund to permanent partial disability claims
 - Material change in that now ATF includes most claims
 - Still applies only to private carriers

2007 Law: The Changes

- Medical Treatment Guidelines
 - Expected savings
 - Not implemented until 2010
 - Other elements of medical benefits implemented at time of law change

2007 Law: The Changes

- Official Pricing Approved by New York Department of Financial Regulation
 - Overall impact of law change was a 17.1% cost decrease
 - Key Assumption: The cost of permanent partial claims would **DECREASE** by approximately 33%
 - Decrease to permanent partial claim costs would more than offset benefit increases

2007 Law: What Actually Happened

2007 Law: What Actually Happened

Approved Lost Cost Changes by Effective Date in New York

Effective Date	Approved Change	Cumulative Change	
9/30/2007	0.00%	0.00%	
10/1/2007	-18.40%	-18.40%	
10/1/2008	-6.40%	-23.62%	
10/1/2009	4.50%	-20.19%	
10/1/2010	7.70%	-14.04%	
10/1/2011	9.10%	-6.22%	
10/1/2012	0.00%	-6.22%	Filed Increase was +11.5%
10/1/2013	9.50%	2.69%	Filed Increase was +16.9%
10/1/2014	0.00%	2.69%	Filed Increase was +6.8% Actuarial Indication was +17.4%

Loss Cost: Indemnity + Medical + Claim Adjustment Expense

2007 Law: What Actually Happened

- What went wrong?
 - Utilization and Healing Period
 - Utilization reflects the willingness to utilize the system either by filing a claim or increasing duration of disability
 - Healing period is the time spent on disability prior to receiving an impairment rating

Consensus view from Oliver Wyman clients:

“More employees using the system for a much longer period of time at a much higher weekly benefit cost”

Only 0.5% provision for increased utilization considered in pricing

2007 Law: What Actually Happened

- Evidence: Frequency – “More employees using the system”
 - Lost time claim frequency stops downward trend and begins to increase
 - Permanent partial percentage of lost time claims accelerates

NEW YORK CLAIM FREQUENCY per 100,000 workers				COUNTRYWIDE CLAIM FREQUENCY per 100,000 workers			
Policy Year	Total Lost Time	Permanent Partial	PP %	Policy Year	Total Lost Time	Permanent Partial	PP %
2001	1219	494	41%	2001	1,275	430	34%
2002	1142	456	40%	2002	1,218	422	35%
2003	1108	440	40%	2003	1,179	423	36%
2004	1030	419	41%	2004	1,124	404	36%
2005	988	416	42%	2005	1,075	384	36%
2006	953	425	45%	2006	1,041	382	37%
2007	939	451	48%	2007	996	378	38%
2008	927	489	53%	2008	925	369	40%
2009	926	509	55%	2009	882	361	41%
2010	943	537	57%	2010	874	344	39%
2011	941	552	59%	2011	866	329	38%

2007 Law: What Actually Happened

- Evidence: Longer Healing Period – “for a much longer period of time”
 - NYWCB: Prior to 2007 → 4.8 years
Post 2007 → 6.4 years
 - At \$600 per week, this adds \$50,000 to a claim
- Why?
 - Economically feasible for claimant to remain out due to high maximum benefit
 - Claimant attorneys acting to delay impairment rating
 - PP duration limit clock starts at impairment rating
 - Does not include healing period
- Insurers may be acting to delay impairment rating to avoid ATF deposit

2007 Law: What Actually Happened

- Duration caps are in place and functioning
- BUT: Hardship clause untested
 - The law allows for claimants with an 80% or more loss of earnings capacity to apply for hardship permanent total disability.
 - Concern is that a large proportion of claimants will, near the end of their claim, apply and receive hardship status.
 - If this occurs, the impact on long term costs will be significant:
 - Permanent Partial disability claims with limited duration will transform into lifetime permanent total disability claims subject to a \$809 max. benefit.
 - Compared to pre-2007 lifetime disability awards subject to \$400 max. benefit.

THIS IS IS A HUGE CONCERN

2007 Law: What Actually Happened

- Aggregate Trust Fund
 - Expanded to include permanent partial disability claims
 - Insurers want to avoid ATF deposit
 - May be acting to extend healing period as well
 - Gives claimant attorneys greater leverage
 - Claimants want to avoid ATF deposit
 - ATF will settle claims at amounts lower than insurer might have settled, and keep the difference
 - Oliver Wyman clients assert leverage generally favors claimants
 - Result is higher costs that are difficult to quantify
 - Original pricing gave no net impact : 0%

2007 Law: What Actually Happened

- Medical Treatment Guidelines
 - Implemented in 2010
 - Favorably received
 - Consensus is they are acting to control costs

2007 Law: What Actually Happened

- Summary
 - Greater number of more expensive claims
 - Maximum weekly benefit materially increased utilization
 - Lost time frequency on a whole is increasing
 - Permanent partial percentage is growing
 - 1.6 years added to healing period
 - ATF increases claimant leverage
 - Hardship clause on duration caps not yet tested

Assessments

Assessments

- 15-8 → Special Disability Fund
- 25-A → Re-opened Claim Fund
- 50-5 → Self-Insurers Assessment
- IDP → Interdepartmental Expense
- 151 → WCB Administration

Assessments

- Methods of Charging: Insured Employer
 - Guarantee Cost
 - Large Deductible
 - Retrospective Plan
- Charge is a percentage of standard premium
- Pass through from insurer
- Annual charge with no future obligation
- 2013: 18.8% of standard premium
- This process was unchanged by the 2013 law

Assessments

- Methods of Charging: Self Insured Employer – Prior to 2013 Law Change
 - % of Prior Year Indemnity Payments
 - 2013: 46.9% of Indemnity Losses
 - Unlimited – prior to consideration of excess Insurance
 - For every indemnity dollar paid, there is an additional 46.9¢ of assessments
 - Accrual required for future indemnity payments

Assessments

ASSESSMENT YEAR	CLAIM RELATED			OTHER			ALL ASSESSMENTS
	15-8	25-A	15-8 and 25-A	IDP	151	50-5	
2001	375,000,000	60,000,000	435,000,000				
2002	379,000,000	64,000,000	443,000,000				
2003							
2004	495,000,000	96,000,000	591,000,000				
2005	538,000,000	102,000,000	640,000,000				
2006	500,000,000	110,000,000	610,000,000				
2007	602,747,649	137,239,465	739,987,114	63,188,412	229,404,962	8,086,616	1,040,667,104
2008	675,773,477	148,945,842	824,719,319	68,686,660	228,656,027	8,419,334	1,130,481,340
2009	750,236,152	271,841,361	1,022,077,513	71,632,038	232,090,199	19,046,273	1,344,846,023
2010	914,115,003	401,889,339	1,316,004,342	78,394,341	243,590,525	33,068,833	1,671,058,041
2011	852,778,219	469,628,120	1,322,406,339	87,636,293	237,505,281	14,157,624	1,661,705,537
2012	912,928,459	368,957,493	1,281,885,952	86,183,537	249,468,312	25,644,033	1,643,181,834

Assessments

Indemnity Payment Percentages

<u>Section</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
15-8	18.3%	19.3%	20.6%	23.2%	21.8%	22.5%	21.1%
25-A	4.1%	4.2%	7.4%	10.1%	12.2%	9.1%	10.2%
151	6.9%	6.8%	6.6%	6.1%	5.5%	6.7%	6.1%
IDP	1.9%	2.0%	2.0%	2.0%	1.9%	1.9%	1.9%
<u>50-5</u>	<u>0.3%</u>	<u>0.3%</u>	<u>0.7%</u>	<u>3.5%</u>	<u>7.1%</u>	<u>7.4%</u>	<u>7.6%</u>
Total	31.5%	32.6%	37.3%	44.9%	48.5%	47.6%	46.9%

Assessments

- Why did 15-8 expand?
 - Thoughts in 2007 were assessments would remain stable and then decline over time.
 - Closure of 15-8 sensitized industry
 - Surge of applications for 15-8
 - 5 year waiting period
 - July 1, 2012 theoretical last date for new claims
 - Huge backlog of cases
 - Assessments will continue for 60+ years until all claims in the special disability fund are closed.
 - Generally lifetime permanent partial claims

2013 Law Change

- Why did 50-5 expand?

- Group Self Insurance Trust Debacle

~65 authorized and operating trusts in 2007

Effective May 1, 2015

3 active trusts

5 closed trusts (estimated)

14 closed insolvent trusts (liabilities sold)

33 trusts in run-off, some of which will become insolvent

10 trusts currently insolvent

- Self-Insured Employers and Groups Pay the Shortfall

“My assessment bill is bigger than my excess insurance premium.”

2013 Law Change

- Why did 25-A expand?
 - Possibly due to economic conditions in 2008 to 2010
 - Possibly sensitized due to closure of 15-8
- Potential future material expansion of 25-A due to unintended consequence of 2007 law:
 - Condition for 25-A Relief
 - Minimum of 7 years have passed since date of loss
 - Minimum of 3 years have passed since last compensation payment
 - Pre-2007: Permanent partial claims were generally lifetime duration
 - Post-2007: Claims capped and many settled.
 - No more compensation payments!
 - Created a huge pool of potential 25-A claims.

2013 Law Change

- 2013 Law Change
 - Change the Assessment Process
 - Common base for all employers – insured or self-insured
 - Standard Premium or Equivalent: “Unified Assessment”
 - Standard Premium for Insured Employers
 - Loss Costs Extended by Payroll for Self-Insured Employers
 - Eliminated balance sheet accrual for future assessments for self-insured employers except for 50-5
 - “Balance Sheet Windfall”
 - Close 25-A to ALL NEW CLAIMS effective January 1, 2014
 - Estimated impact on cost ~5%.
 - Runoff will be 60+ years
 - Increase minimum weekly benefit from \$100 to \$150

2013 Law Change

- Summary
 1. Does nothing to address system costs
 2. Simplifies assessments
 - a) Puts all players on same level
 - b) Treats self-insureds equitably
 3. Closed 25-A to prevent big problem

So Here We Are Now

