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## The Evolution of Worker's Compensation Claims - From Processing Claims to Fully Investigating

- I. The transition of worker's compensation claims over the years from simply processing a reported claim to now fully investigating

### Quick overview of History of Comp Claims

The American worker's compensation statutes in the U.S. are loosely modeled off the central tenet of "no-fault" insurance and that industrial accidents are accepted as facts of life and that the work comp system exists to deal with that and the financial consequences as quickly as possible. The first comprehensive work comp law was passed in Wisconsin in 1911, nine other states passed laws that year and the last state to pass a worker's compensation law was Mississippi in 1948.

Comp schemes are either employer funded by insurance or self-insured accounts. Most are handled by state created Boards, appealable to the State Court, but some states allow claims to go directly to the state court. All 50 states have their own legislation, but they share that the system has an intrinsic incentive toward the rehabilitation of the injured worker.

### Report – service – close

Since the worker's compensation system is an exclusive remedy for industrial accidents and since it started out as a system to deal with the financial consequences as quickly as possible of these matters and quickly close, this became the "norm" and claims weren't investigated.

### Investigation

However, carriers and self-insured employers started to see the rising cost of claims and some claims are exaggerated, prolonged, or even fraudulent. Investigation stops the bleeding. If we don't stop the bleeding, you are going to bleed out. Some Employers make the focus of the Investigation revenge and are not looking at it from a business point of view. We want to look at

things factually and keep it professional. If you hear rumors, remember 10% is true, and the rest is not.

You want to make decisions as to what is reasonable and decide whether you are going to get something back from this. - Stop the bleeding – If you do two days of investigation, and get nothing, it doesn't necessarily mean it is invaluable, but you may want to try another type of investigation or a different strategy.

Investigations are a lot like a tool box. You may start with a hammer, but then you may eventually need a screw driver. You need many different types of investigation.

## II. Types of Investigation

The Benefits of an Early investigation will assist in the claim as they can prevent benefit issues from getting out of hand, lead to earlier maximum medical impairment designation, establish baseline symptoms for later comparison, and the injured worker isn't yet suspicious.

Investigative tools include: Interviews; videos (worksite and bystander); Surveillance – the dos and don'ts and how to maximize it; Background checks – all vendors and products are not the same; Social media checks – goldmine of information; Medical canvass – the most under-utilized tool in investigations; Government records – endless potential; Loss scene canvass - you don't know what you are missing until you check.; injured worker depositions; doctor's depositions; and written discovery.

### Surveillance

We want to obtain relevant footage, address privacy concerns, and preserve evidentiary value and the record for trial in order to benefit the employer and the case.

## III. The Results of Investigation

### *Video*

### Cost Savings over time

It can take longer than preferred, but Employers may reap reward from the investigation by preventing future losses and there can be reward having employees stop and think before they file a claim.

### Fraud

We've identified a fraudulent case, and have evidence, but now what? Not all cases will be cases that are prosecuted. However, if so, prosecution may involve working with the District Attorney. We will share stories about prosecuting fraud and the real result of how it ends.

#### IV. Avoiding bad faith during investigations and not running afoul of the laws in the jurisdictions

It is important to avoid bad faith fines or penalties which can result if investigation is used too aggressively or introduced in certain ways through the worker's compensation system.

Bad Faith is defined generally and legally (Black's Law Dictionary) as: the opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

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