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Rep. Matthew Lehman, Chairperson
Rep. Robert Heaton
Rep. Charlie Brown
Rep. Phil GiaQuinta
Sen. James Smith, Vice-Chairperson
Sen. Travis Holdman
Sen. Greg Taylor
Sen. Frank Mrvan

INTERIM STUDY COMMITTEE ON INSURANCE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Ann Naughton, Attorney for the Committee
Bill Brumbach, Fiscal Analyst for the Committee
Stephanie Wells, Fiscal Analyst for the Committee

Authority: IC 2-5-33.3

MEETING MINUTES[1]

Meeting Date:	**October 10, 2012**
Meeting Time:	**1:00 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 233**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**3**

Members Present: **Rep. Matthew Lehman, Chairperson; Rep. Phil GiaQuinta; Sen. James Smith, Vice-Chairperson; Sen. Greg Taylor.**

Members Absent: **Rep. Robert Heaton; Rep. Charlie Brown; Sen. Travis Holdman; Sen. Frank Mrvan.**

Rep. Lehman called the meeting to order at 1:10 p.m. and expressed his desire to continue the work of the Committee concerning worker's compensation benefits and cost containment that had occurred at the last meeting and approach the more narrow issue of hospital reimbursement and indemnity benefits under Indiana worker's compensation. He explained that if no consensus for proposed legislation or recommendations was reached at this meeting, work would continue and any conclusions would be noted in the Committee's final report to be voted on at the October 23, 2012, meeting, with work on proposed legislation continuing so that a bill could be introduced during the 2013 legislative session.

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[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

Report concerning comparison of worker's compensation costs and benefits among states

Mike Ripley, Indiana Chamber of Commerce, provided a handout[2] and described the materials containing information comparing worker's compensation costs and benefits in Indiana and other states.

In response to questions from Sen. Taylor and Rep. Lehman, Mr. Ripley stated that:

> (1) Indiana employees who receive worker's compensation return to work sooner than employees in other states, partially because of the construction of Indiana's worker's compensation law;
> (2) Indiana's worker's compensation costs are driven by hospital reimbursement costs;
> (3) the Chamber represents both hospitals and employers, so it sees both sides of the hospital reimbursement issue; and
> (4) the handout contains a variety of information because comparison of worker's compensation benefits and costs among the states is not exact due to differences in state laws, factors on which payment schedules are based, costs of living from state to state, etc.

Report concerning meeting with Indiana Hospital Association and Insurance Institute of Indiana

Mr. Ripley provided a report of the results of his meeting with representatives of the Indiana Hospital Association and the Insurance Institute of Indiana concerning hospital reimbursement rates under worker's compensation insurance policies. He explained that internal discussions of a different approach to the hospital reimbursement issue (than the approaches previously discussed by the Committee) are occurring and that further information from the parties' analyses of the different approach may be available at the October 23, 2012, meeting of the Committee. Mr. Ripley acknowledged that he is not hopeful for compromise between the parties, despite good faith efforts on both sides, and noted that the General Assembly would likely need to make a decision to resolve the issue.

Worker's compensation benefit adjustments

Rep. Lehman requested information from Ron Cooper, Indiana Compensation Rating Bureau, concerning worker's compensation benefit levels and cost control. Mr. Cooper commented on an actuarial analysis model using three possible "Medicare plus" (the Medicare rate plus a certain percentage) maximum reimbursement rates, explaining that the model could be used to analyze various scenarios in drafting legislation.

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[2]Attachment 1.

In response to questions from Rep. Lehman and Sen. Taylor, Mr. Cooper stated that as a Medicare plus system would result in decreased reimbursement costs, indemnity benefits could potentially be increased by an equal amount resulting in little change to employer costs.

Ed Roberts, Indiana Manufacturer's Association, provided written information[3] and described some of the history of worker's compensation in Indiana. He stated that Indiana's relatively low worker's compensation costs are not due to low benefits, but rather are due to the manner in which Indiana's statute requires worker's compensation to be administered in Indiana, preventing third party involvement in claims, high court costs, administrative costs, etc., so the funds are spent on the patient rather than other costs. He cautioned against attempts to compare Indiana's worker's compensation system to other states' systems due to the differences in design. Mr. Roberts explained that Indiana's indemnity benefits are based on the employee's loss (wage, duration of claim, and statutory maximum), rather than the employee's cost of living and earning capacity, and that Indiana's worker's compensation system encourages employees to gradually return to work by providing for light duty assignments, which decreases costs and improves morale.

Mr. Ripley stated that the cost of worker's compensation indemnity in Indiana reflects the fact that employees in Indiana return to work sooner than employees in other states.

There was general discussion concerning Indiana's indemnity costs and worker's compensation administration, generally compared with other states.

Tim Kennedy, Indiana Hospital Association, described his concerns related to possible use of a Medicare plus maximum rate, including:

> (1) Medicare reimbursement to Indiana is expected to be reduced by $3.8 billion over the next ten years;
> (2) there are various types of Medicare payments and it is important to be clear about which of those will be used; and
> (3) use of a Medicare plus methodology would likely require Indiana to increase staff at the Worker's Compensation Board to process worker's compensation claims.

Captive Insurers in Indiana

Rep. Lehman expressed his interest in beginning a discussion concerning legislatively authorizing formation of captive insurers within business entities in Indiana, which is currently done in other states.

Abel Contreras, Consolidated Insurance Services, Inc., explained that a captive insurance company is sometimes considered self-insurance, but it is, rather, a

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[3]Attachment 2.

company that is wholly owned by a parent and insures the risks of the parent and subsidiaries of the parent, and is frequently formed because insuring those risks with a traditional insurance company is cost-prohibitive. Mr. Contreras noted that Indiana allows for other types of alternative risk management, such as risk retention groups, and stated that 40 other states have enacted statutes providing for formation of captive insurance companies within those states, allowing those states to capture the tax revenue and economic impact attributable to those companies. He stated that an important part of authorizing legislation would be determination of the regulatory authority responsible for captive insurance companies. He expressed his belief that the regulatory authority should work with the Department of Insurance, but should not be the Commissioner of the Department of Insurance due to the high level of scrutiny that must be given to captive insurers to ensure that they are safely administered.

Mr. Contreras provided a copy of the Vermont statute authorizing captive insurers[4] and a copy of a Tennessee court opinion[5] in a case involving a captive insurer that was not sufficiently regulated.

Rep. Lehman stated that he does not anticipate introduction of captive insurer legislation during the 2013 legislative session due to necessary complexity and need for adequate time to prepare, but that he wanted to bring the issue to the attention of the members for possible future consideration.

In response to a question from Sen. Taylor, Mr. Contreras noted that traditional insurance companies are likely to oppose authorization of captive insurer formation in Indiana due to premium share concerns.

Jon Zarich, Insurance Institute of Indiana, explained that there is a competetive insurance market in Indiana and he is not sure how to predict the net effect on corporate income tax revenue of authorizing captive formation in Indiana. He questioned whether a captive formed in Indiana would insure only the parent company's and subsidiaries' risks, or whether insuring of other companies' risks would also occur (which would result in competition with traditional insurers and require regulation as a traditional insurer, rather than as a captive only, to ensure solvency).

With no further business to discuss, Rep. Lehman adjourned the meeting at 2:20 p.m.

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[4]Attachment 3.

[5]Attachment 4.

ICIN
October 10, 2012
Attachment 1

Summary of Worker's Comp Benefits and Costs

1. Table 1, State by state comparisons of Statutory Worker's Comp Coverage Requirements. Thirty -four states (incl. Indiana) have mandatory coverage for all private employers. (Texas Study 2003)
2. Statutory Limitations on Medical Benefits-45 states (including Indiana) do not place statutory limitations on Medical Benefits. (Texas Study 2003)
3. State comparisons of Statutory Provisions relating to initial choice of Doctor. Ten states (including Indiana) have employer having initial choice of treating doctor. (Texas Study 2003)
4. State comparisons of waiting periods before receiving income benefits. Twenty-two states have a 7 day waiting period (including Indiana). (Texas Study 2003)
5. Worker's Comp Benefits Coverage for Temporary Total Disability (TTD). Indiana listed 36th. *Maximum Weekly Benefit for Indiana has changed. Source: National Academy of Social Insurance Sept 2010
6. Two Power Point slides on Wage Replacement for TTD. *Note maximum wage replacement 7/1/09 $975. Source: Senator Tallian power point 08/24/2011
7. State comparisons of Permanent Partial Disability (PPD). Self –Explanatory Source: National Academy of Social Insurance Sept 2010
8. PPD Benefits(pages identified as 14-17). *Indiana is considered Permanent Partial Impairment – PPI. Texas Study 2003
9. Permanent Total Disability Indiana listed 32nd. * Note maximum wage benefit has increased from this document. Source: National Academy of Social Insurance Sept 2010
10. Worker's Compensation Benefits, Coverage and Costs- this provides a side-by-s ide comparison of state waiting periods, TTD, PTD, PPD and Death Benefits. Source: National Academy of Social Insurance August 2012
11. Figure 1(color) and Table 2 Worker's Compensation premium rate ranking. Indiana is number 2 in lowest premium or 50th from the highest in WC premium rates. Premium rate indices are calculated based on data from 51 jurisdictions, for rates in effect as of Jan. 1, 2010 per $100 of payroll.
12. Power point slide for Indiana Average cost per claim and figure 4, sixteen state comparison of average costs per claim. Source Benchmarks for Indiana, Compscope 13th edition October 2012

Table 1
State-by-State Comparisons of Statutory Workers' Compensation Coverage Requirements for Private Sector Employers

Elective Coverage for Private Employers	Mandatory Coverage for All Private Employers	Mandatory Coverage for Private Employers with 3 or More Employees	Mandatory Coverage for Private Employers with 4 or More Employees	Mandatory Coverage for Private Employers with 5 or More Employees
New Jersey*	Alaska	Arkansas	Rhode Island	Alabama
Texas	Arizona	Georgia	South Carolina	Mississippi
	California	Michigan	Florida	Missouri
	Colorado	New Mexico		Tennessee
	Connecticut	North Carolina		
	Delaware	Virginia		
	Hawaii	Wisconsin		
	Idaho			
	Illinois			
	Indiana			
	Iowa			
	Kansas			
	Kentucky			
	Louisiana			
	Maine			
	Maryland			
	Massachusetts			
	Minnesota			
	Montana			
	Nebraska			
	Nevada			
	New Hampshire			
	New York			
	North Dakota			
	Ohio			
	Oklahoma			
	Oregon			
	Pennsylvania			
	South Dakota			
	Utah			
	Vermont			
	Washington			
	West Virginia			
	Wyoming			

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

Note: * New Jersey has a single law, which includes two alternatives for employers: 1) purchase a standard workers' compensation insurance policy; or 2) get approval to self-insure from the state and purchase a form of employers' liability insurance based on traditional common law remedies. Due to the restrictive nature of the statute, virtually all New Jersey employers have opted to purchase a workers' compensation insurance policy. Certain states do not require workers' compensation coverage for particular industries. For example, in states such as Georgia, Kansas, Missouri, Nebraska, and Wyoming, workers' compensation coverage is elective for certain agricultural employers.

Statutory Limitations on Medical Benefits

- The vast majority of states (45 states, including Texas) do not place any statutory limitations on medical benefits, including the length of time an injured worker may receive medical care related to an on-the-job injury or the total amount of money that can be spent on medical care related to an on-the-job injury.

- Of the remaining five states:

    - Two states (Florida and Montana) require injured workers to pay a co-payment for medical services under certain circumstances;

    - One state (Tennessee) places limits on psychological treatment if not based on a referral from a physician;

    - One state (Ohio) specifies that once the injured worker has received Temporary Total Disability benefits (i.e., income benefits) for ninety days, the worker must be evaluated by the exclusive state fund to determine continued eligibility for income benefits and the appropriateness of the medical treatment being provided; and

    - One state (Arkansas) ends employer liability for medical care after six months if the worker has never lost time away from work, returned to work for at least six months, or a maximum of $10,000 has been paid, unless the employer agrees to extend the time and dollar limits.

- It is important to note that although most states do not place limits on an injured worker's access to medical care for a work-related injury, many states limit the usage of specific medical services (e.g., limitations on the number of chiropractic manipulations that can be billed per patient) through statutory provisions or state-adopted treatment guidelines.

Table 2
State-by-State Comparison of Statutory Provisions Relating to Initial Choice of Treating Doctor

States with Employee Choice of Treating Doctor			States with Employer Choice of Treating Doctor		
Employee Has Initial Choice of Treating Doctor	Employee Selects from List Prepared by State Agency	Employee Selects from List Maintained by Employer	Employer Has Initial Choice of Treating Doctor	Employer's Choice of Doctor May Be Changed by State Agency	After Specified Period of Time, Employee Has Choice of Treating Doctor
Alaska	Connecticut	Georgia	Alabama	Arkansas	California**
Arizona	Nevada	Tennessee	Florida	Colorado	Maine
Connecticut*	New York	Virginia	Indiana	Idaho	Michigan
Delaware	**Texas**		Iowa		New Mexico
Hawaii			Kansas		Pennsylvania
Illinois			Missouri		Utah
Kentucky			New Jersey		Vermont
Louisiana			North Carolina		
Maryland			Oklahoma		
Massachusetts			South Carolina		
Minnesota					
Mississippi					
Montana*					
Nebraska					
New Hampshire*					
North Dakota*					
Ohio					
Oregon*					
Rhode Island					
South Dakota					
Washington					
West Virginia					
Wisconsin					
Wyoming					

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

Note: * In these states if an employer and/or insurance carrier has a managed care arrangement for workers' compensation, then injured workers are required to choose a treating doctor from within the employer's or carrier's network.

** If an employer has designated at least two Health Care Organizations (HCOs), then the timeframe that an employer has to choose the treating doctor is normally extended.

Waiting Periods and Retroactive Periods for Income Benefits

- Overall, most states require injured employees to wait either 3 days or 7 days before receiving income benefits (22 states have a 3-day waiting period; 1 state has a 4-day waiting period, 5 states have a 5-day waiting period and 22 states, including Texas, have a 7-day waiting period). **See Table 3.**

- Many states allow injured employees to recoup their income benefits for the waiting period after a specified period of time set by statute (this is often referred to as the "retroactive period"). Most states have a statutory retroactive period of 14 days (4 states have no statutory retroactive period; 11 states have a 5-10-day retroactive period; 22 states have a 14-day retroactive period; 8 states have a 21-day retroactive period; 3 states, including Texas, have a 28-day retroactive period and 2 states have a 42-day retroactive period). **See Table 4.**

Table 3
State-by-State Comparisons of Statutory Waiting Periods
as of January 2003

3 Days	4 Days	5 Days	7 Days
Alabama	North Dakota	Idaho	Arizona
Alaska		Massachusetts	Arkansas
California		Mississippi	Florida
Colorado		Nevada	Georgia
Connecticut		Montana	Indiana
Delaware			Kansas
Hawaii			Kentucky
Illinois			Louisiana
Iowa			Maine
Maryland			Michigan
Minnesota			Nebraska
Missouri			New Jersey
New Hampshire			New Mexico
Oklahoma			New York
Oregon			North Carolina
Rhode Island			Ohio
Utah			Pennsylvania
Vermont			South Carolina
Washington			South Dakota
West Virginia			Tennessee
Wisconsin			**Texas**
Wyoming			Virginia

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

Rank	TTD - State	Max Weekly Benefit	Max Length of Benefits (in weeks)
1	Iowa	$1,366.00	length of disability up to life
2	D.C.	$1,288.00	500 weeks, petition for extra 167
3	New Hampshire	$1,255.50	Duration of Disability
4	Illinois	$1,178.48	Duration of Disability
5	Connecticut	$1,077.00	Duration of Disability
6	Vermont	$1,053.00	Duration of Disability
7	Oregon	$1,051.21	Duration of Disability
8	Washington	$1,043.49	Duration of Disability
9	Massachusetts	$1,000.43	156 weeks
10	Alaska	$939.00	Until medically stable or released to work
11	California	$916.33	104 weeks
12	Rhode Island	$882.00	Plus $15 per dependent, Duration of Disability
13	Maryland	$877.00	Duration of Disability
14	Virginia	$841.00	500 weeks
15	Tennessee	$827.00	400 weeks
16	Wyoming	$815.00	24 months
17	Pennsylvania	$807.00	Duration of Disability
18	Wisconsin	$805.00	Duration of Disability
19	Colorado	$786.17	Duration of Disability
20	North Carolina	$786.00	Duration of Disability
21	Nevada	$784.35	Duration of Disability
22	Ohio	$751.00	Duration of Disability
23	Minnesota	$750.00	104 weeks
24	New Jersey	$742.00	400 weeks
25	Michigan	$739.00	Duration of Disability
26	Florida	$736.00	104 weeks
27	Missouri	$722.53	400 weeks
28	Texas	$712.00	105 weeks
29	Alabama	$706.00	Duration of Disability
30	Utah	$702.00	312 weeks
31	North Dakota	$689.00	104 weeks
32	Kentucky	$670.02	Duration of Disability or until receipt of Social Security
33	South Carolina	$661.29	500 weeks
34	Nebraska	$644.00	Duration of Disability
35	West Virginia	$640.35	104 weeks
36	Indiana	$636.00	500 weeks
37	New Mexico	$635.46	700 weeks
38	Delaware	$605.00	unlimited
39	Montana	$604.00	Duration of Disability
40	South Dakota	$598.00	Duration of Disability
41	Maine	$596.42	416 weeks
42	Oklahoma	$577.00	300 weeks
43	Idaho	$556.20	Duration of Disability
44	New York	$550.00	Duration of Disability
45	Kansas	$529.00	225 to 415 weeks
46	Arkansas	$522.00	450 weeks
47	Louisiana	$522.00	Duration of Disability
48	Georgia	$500.00	400 weeks unless catastrophic
49	Arizona	$466.06	Duration of Disability
50	Mississippi	$398.93	450 weeks

Source: "Workers' Compensation: Benefits, Coverage, and Costs 2008," National Academy of Social Inurance, September 2010.

Wage Replacement

- Temporary Total Disability (TTD)
  - An employee is considered to be totally disabled during the period of injury when he or she is temporarily unable to work.
- Benefits are calculated as 66 2/3% of weekly wages, with a wage cap of $975 per week. (I.C. 22-3-3-8)
  - Even if an employee's wages are $1500/ week, the maximum benefit they can receive is 2/3 of $975, which equals $650/ week.
  - Historically, this cap has been updated regularly, but the last update was in 2006
- Benefits are not to exceed 500 weeks. (I.C. 22-3-3-10 (12))
- Wage Replacement is an element of WC benefits in nearly every state and the 2/3 replacement rate is fairly common

Maximum Wage Replacement for PPI

Year	Max. Wage-Replacement Amount
July 1, 1997 to July 1, 1998	$672
July 1, 1998 to July 1, 1999	$702
July 1, 1999 to July 1, 2000	$732
July 1, 2000 to July 1, 2001	$762
July 1, 2001 to July 2, 2002	$822
July 1, 2002 to July 1, 2006	$882
July 1, 2006 to July 1, 2007	$900
July 1, 2007 to July 1, 2008	$930
July 1, 2008 to July 1, 2009	$954
On or after July 1, 2009	$975

IC 22-3-3-10(12)(k)(5-14)

PPD - State	Max wkly Benefit	Max PPD benefits for Unscheduled Injury
Alabama	$220.00	300 wks
Alaska	$901.00	No unscheduled PPD
Arizona	Depends on the % of disability	None
Arkansas	$392.00	450 wks
California	$230 if impairment is <70% & $270 if >70%	n/a
Colorado	$247.42 scheduled injuries, $786.17 unscheduled	400 wks
Connecticut	$853.00	520
D.C.	$1,288.00	$75000 paid by employer, over paid from PTD trust fund
Delaware	$605.15	300
Florida	$746.00	2 wks for each % of impairment from 1-10%, 3 wks from 11-15%, 4 wks for 16-20%, & 6 wks for each rating over
Georgia	$500.00	300 wks
Idaho	$339.00	500 wks
Illinois	$664.72	500 wks
Indiana	n/a	500 wks
Iowa	$1,257	500 wks
Kansas	$529.00	415 wks but the first 15 wks don't count towards the max
Kentucky	$502.51	425 wks if rating is 50% or less, 520 wks if rating is over 50%
Louisiana	$478.00	520 wks
Maine	$596.42	260 wks for the duration if PPD greater than 15% of the body
Maryland	2/3 of AWW for serious disability not to exceed 75% of AWW or $658	n/a
Massachusetts	$1,000.43	364 wks
Michigan	n/a	n/a
Minnesota	$750.00	no
Mississippi	$398.93	450 wks
Missouri	$404.66	400 wks
Montana	$302.00	375 wks
Nebraska	$633.00	300 wks
Nevada	$784.35	PPD benefits for 5 years or to age 70, whichever is later
New Hampshire	$1,255.00	350 wks for a whole person award
New Jersey	$742.00	600 wks
New Mexico	$635.46	500 wks if rating is less than 80%, 700 wks if rating is greater
New York	$550.00	525 wks if accidnt on or after March 13, 2007
North Carolina	$786.00 for scheduled injuries	
North Dakota	$382.74x100% whole body	100% impairment
Ohio	$751 for scheduled, $250.33 for unscheduled	200 wks
Oklahoma	$289.00	500 wks
Oregon	$790.38 impairment, $1051.21 wkly work loss	$302,945.73
Pennsylvania	$836.00	
Rhode Isl &	$90.00	500 wks
South Carolina	$661.29	340 wks
South Dakota	$598.00	312 wks
Tennessee	$752.00	400 wks
Texas	$498.00	300 wks
Utah	$468.00	312 wks
Vermont	$1,053.00	405 wks for non-spinal, 550 wks spinal
Virginia	$841.00	no unscheduled PPD
Washington	$961.43	none
West Virginia	$448.39	none
Wisconsin	$272.00	1000 wks
Wyoming	none	44 months

Permanent Partial Disability (PPD) Benefits

Statutory Eligibility Requirements for Permanent Partial Disability (PPD) Benefits

- Permanent Partial Disability (PPD) benefits (referred to as Impairment Income Benefits - IIBs or Supplemental Income Benefits – SIBs in Texas) are paid to injured workers who have suffered either a permanent impairment or a disability as a result of a work-related injury.[5]

- Forty-two states, not including Texas, pay PPD benefits for the loss of use of particular body parts according to a set benefit schedule.[6] For example, an injured worker who loses the use of a foot in a state with a PPD benefit schedule is compensated for a number of weeks proportional to the degree of impairment or disability the injured worker sustained. **See Table 6.**

- All states with benefit schedules also pay PPD benefits for unscheduled injuries. To determine PPD benefits for injuries that are not part of a state's benefit schedule, states use one or more of the following four basic methods (**see Table 7**).[7]

    - Nineteen states, including Texas, use the impairment approach, which only includes the actual physical and psychological loss produced by the injury. In these states, impairment is generally measured by an impairment rating, which is generally assigned by a doctor using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* or another rating guide.[8]

    - Thirteen states use a loss of wage-earning capacity approach to determine unscheduled PPD benefits. This approach estimates the impact of the injury on an injured worker's future wages, often using factors such as age, education, training and skills, the worker's impairment rating and existing labor-market conditions.

    - Ten states use a wage-loss approach, which determines PPD benefits using the difference between the worker's pre- and post-injury wages.

    - Eight states use a bifurcated approach. For workers who have returned to work at or near their pre-injury wage, PPD benefits are determined based on their impairment rating, while other workers' PPD benefits are determined on their loss of wage-earning capacity.

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[5] "Permanent Impairment" is the permanent loss of physical functioning that directly results from a work-related injury (usually measured by an impairment rating, which represents the percentage of a person's whole body that is impaired as a result of the injury), while "Disability" refers to the economic consequence of a work-related injury (i.e., loss of income or loss of ability to work).

[6] Prior to the 1989 reforms, Texas used a PPD benefit schedule for certain types of injuries.

[7] See Barth, Peter and Michael Niss. *Permanent Partial Disability Benefits: Interstate Differences*, Workers' Compensation Research Institute, Cambridge, Massachusetts, 1999.

[8] In Texas, doctors assign impairment ratings to injured workers using the American Medical Association's *Guide to the Evaluation of Permanent Impairment*, fourth edition as mandated by Section 408.124 of the Texas *Labor Code*.

Table 6
States That Use Benefit Schedules to Pay Permanent Partial Disability (PPD) Benefits for Certain Injuries

State	Benefit Schedule Linked to Worker's Pre-Injury Wages	Partial Loss of Use of Body Part Rated Based on	
		Impairment	Disability
Alabama	X	X	
Arizona	X	X	
Arkansas	X	X	
California	X		X
Colorado		X	
Connecticut	X	X	
Delaware	X	X	
Georgia	X	X	
Hawaii		X	
Idaho		X	
Illinois	X		X
Indiana		X	
Iowa	X		X
Kansas	X	X	
Louisiana	X	X	
Maine	X	Not applicable	
Maryland	X	X	
Massachusetts		X	
Michigan	X	Not applicable	
Minnesota		X	
Mississippi	X		X
Missouri	X		X
Nebraska	X	X	
New Hampshire	X	X	
New Jersey	X	X	
New Mexico	X		X
New York	X	X	
North Carolina	X	X	X
North Dakota		X	
Ohio		X	
Oklahoma	X	X	
Oregon		X	
Pennsylvania	X	Not applicable	

Table 6
States That Use Benefit Schedules to Pay Permanent Partial Disability (PPD) Benefits for Certain Injuries, *continued*

State	Benefit Schedule Linked to Worker's Pre-Injury Wages	Partial Loss of Use of Body Part Rated Based on	
		Impairment	Disability
Rhode Island	X	X	
South Carolina	X		X
South Dakota	X	X	
Tennessee	X		X
Utah	X	X	
Virginia	X	X	
Washington		X	
West Virginia	X	X	
Wisconsin	X	X	

Source: Barth, Peter and Michael Niss. *Permanent Partial Disability Benefits: Interstate Differences*, Workers' Compensation Research Institute, Cambridge, Massachusetts, 1999.
Note: Maine, Michigan and Pennsylvania do not schedule partial losses. In Maryland, where impairment is below a certain level, the condition is evaluated on a disability basis. New York pays benefits for certain scheduled losses with impairment ratings at or above 50 percent. In North Carolina, the worker chooses whether the loss is rated as an impairment or a disability.

Table 7
Methods States Use to Pay Permanent Partial Disability (PPD) Benefits for Unscheduled Injuries

State	PPD Benefits Based on			
	Impairment	Loss of Wage-Earning Capacity	Wage Loss	Bifurcated Approach
Alabama				X
Alaska	X			
Arizona			X	
Arkansas				X
California		X		
Colorado	X			
Connecticut	X			
Delaware	X			
Florida	X			
Georgia	X			
Hawaii	X			
Idaho		X		
Illinois		X		
Indiana	X			
Iowa		X		
Kansas				X

Table 7: Methods States Use to Pay Permanent Partial Disability (PPD) Benefits for Unscheduled Injuries, *continued*

State	PPD Benefits Based on			
	Impairment	Loss of Wage-Earning Capacity	Wage Loss	Bifurcated Approach
Kentucky				X
Louisiana			X	
Maine			X	
Maryland		X		
Massachusetts			X	
Michigan			X	
Minnesota	X			
Mississippi		X		
Missouri		X		
Montana				X
Nebraska		X		
Nevada	X			
New Hampshire			X	
New Jersey	X			
New Mexico		X		
New York		X		
North Carolina				X
North Dakota			X	
Ohio			X	
Oklahoma	X			
Oregon		X		
Pennsylvania			X	
Rhode Island			X	
South Carolina		X		
South Dakota	X			
Tennessee				X
Texas	X			
Utah	X			
Vermont	X			
Virginia	X			
Washington	X			
West Virginia	X			
Wisconsin				X
Wyoming		X		

Source: Barth, Peter and Michael Niss. *Permanent Partial Disability Benefits: Interstate Differences*, Workers' Compensation Research Institute, Cambridge, Massachusetts, 1999.
Note: In Connecticut, Minnesota, North Carolina, and Virginia, almost all losses are scheduled.

Rank	PTD - State	Max Weekly Benefit	Max as a % of SAWW	Max Length of Benefits
1	Iowa	$1,366.00	80%	200 weeks
2	D.C.	$1,288.00	66.67%	500 weeks with petition for additional 167 weeks
3	New Hampshire	$1,255.50	60%	Length of Disability up to life
4	Illinois	$1,178.48	66.67%	Length of Disability up to life
5	Connecticut	$1,077.00	75%	Length of Disability up to life
6	Vermont	$1,053.00	66.67%	Length of Disability up to life, reassessed after 330 weeks
7	Washington	$1,043.49	Depends on Employee Option	Length of Disability up to life
8	Massachusetts	$1,000.43	66.67%	Length of Disability up to life
9	Alaska	$901.00	80%	Length of Disability up to life
10	Rhode Island	$882.00	75%	additional $15 per dependent, Length of Disability up to life
11	Maryland	$877.00	66.67%	Length of Disability up to life
12	Virginia	$841.00	66.67%	Length of Disability up to life
13	Wisconsin	$805.00	66.67%	Length of Disability up to life
14	Oregon	$790.38	66.67%	Length of Disability up to life
15	Colorado	$786.17	66.67%	Length of Disability up to life
16	North Carolina	$786.00	66.67%	Length of Disability up to life
17	Nevada	$784.35	66.67%	Length of Disability up to life
18	Missouri	$772.53	66.67%	Length of Disability up to life
19	Tennessee	$752.00	66.67%	Until Social Security Eligibility
20	Ohio	$751.00	72%	Length of Disability up to life
21	Minnesota	$750.00	66.67%	Until retirement age
22	Florida	$746.00	66.67%	To age 75
23	New Jersey	$742.00	70%	Length of Disability up to life
24	Michigan	$739.00	80%	800 weeks w/determination after
25	Texas	$712.00	75%	Length of Disability up to life
26	Alabama	$706.00	66.67%	Length of Disability up to life
27	North Dakota	$689.00	66.67%	Until retirement age
28	Kentucky	$670.02	66.67%	Length of Disability until reach Social Security Age
29	South Carolina	$661.29	66.67%	500 weeks unless eligible for lifetime
30	Nebraska	$644.00	66.67%	Length of Disability up to life
31	West Virginia	$640.56	66.67%	Until age 70
32	Indiana	$636.00	+ 650 new 66.67%	500 weeks
33	New Mexico	$635.46	66.67%	Length of Disability up to life
34	Delaware	$605.00	66.67%	300 weeks or life w/permanent disability
35	Montana	$604.00	66.67%	Until retirement age
36	South Dakota	$598.00	66.67%	Length of Disability up to life
37	Utah	$597.00	66.67%	Length of Disability up to life
38	Maine	$596.42	80%	Length of Disability up to life
39	Oklahoma	$577.00	70%	Length of Disability up to life
40	Idaho	$556.00	67%	Length of Disability up to life
41	New York	$550.00	66.67%	Length of Disability up to life
42	Wyoming	$543.44	66.67%	80 months then becomes extended PTD, renewed annually
43	Kansas	$525.00	66.67%	Length of Disability up to life w/max of $125,000
44	Arkansas	$522.00	66.67%	Length of Disability up to life
45	Louisiana	$522.00	66.67%	Length of Disability up to life
46	Georgia	$500.00	n/a	Length of Disability up to life
47	Arizona	$461.00	66.67%	Length of Disability up to life
48	Mississippi	$398.93	66.67%	450 weeks
49	California	$270.00	66.67%	Length of Disability up to life
50	Pennsylvania	0	n/a	n/a

Workers' Compensation:

Benefits, Coverage, and Costs, 2010

by

Ishita Sengupta, Virginia Reno, John F. Burton, Jr. and Marjorie Baldwin

with advice of the

Study Panel on Workers' Compensation Data

August 2012

NATIONAL ACADEMY OF·SOCIAL INSURANCE

Washington, DC

Appendix I: Workers' Compensation under State Laws

Table I illustrates the benefit parameters which form the basis for the data estimated in this report. The table is taken from the IAIABC (International Association of Industrial Accident Board and Commissions) and WCRI (Workers Compensation Research Institute) joint publication of Workers' Compensation Laws (IAIABC-WCRI 2012). The state laws are as of January 2012.

The benefit parameters defined in this table portray the workers' compensation differences across states. The difference may lie in (a) when the first day of disability begins; (b) compensation that is included in determining the "wage"; (c) periods over which the average wage is calculated; (d) caps on wages earned by the injured worker; or in (e) differences in calculation of compensation rate, etc. For each state the table describes:

- The waiting period before a worker receives benefits.
- The maximum benefit payments and length of benefit payments for Temporary Total Disability.
- The weekly payments and benefit limitations for Permanent Total Disability.
- The maximum weekly benefit and benefit limitations for Permanent Partial Disability.
- The maximum weekly benefit and benefit limitations for Death Benefits.

Table I

Workers' Compensation State Laws as of January 2012

	Waiting Period, Jan 12		Temporary Total Disability, Jan 12		Permanent Total Disability, Jan 12				Permanent Partial Disability, Jan 12		Death Benefits, Jan 12	
State	Waiting Period before a worker can receive Indemnity benefits	Retroactive period	Maximum Weekly TTD Benefits	Maximum Length of TTD Benefits (in weeks)	Basis of PTD Calculation	Maximum Weekly PTD Benefits	Maximum Length of PTD Benefits	Limit to Monetary PTD Benefits	Maximum Weekly PPD Disability Benefits	Maximum PPD Benefits for "Unscheduled Injuries" (weeks)	Maximum Weekly Dependency Benefits	Statutory Limit for Dependency Benefits
Alabama	3 days	21 days	$755.00	Duration of TTD disability	66 2/3% PIWW	$755.00	No	No	$220.00	300	$755.00	500 weeks
Alaska	3 days	More than 28 days	$1,085.00	Continue until employee is medically stable or released to work	80% of the workers spendable after tax or NWW	Depends upon year of injury. Maximum PTD benefit would be the maximum TTD benefit in the year of injury	If found to no longer be permanently and totally disabled	Up to the maximum TTD weekly rate. Benefits continue until no longer PTD or death	$950.00	No unscheduled PPD	$1,085.00	12 years
Arizona	7 days	14 days	$623.28	Duration of TTD disability	66 2/3% AMW	$625.05	No	No	$703.14 for scheduled injuries; for unscheduled injuries, N/A	Payable for life unless rearranged by Industrial Commission	$625.05	None
Arkansas	7 days	14 days	$584.00	450	66 2/3% PIWW	$584.00	Benefits are for the length of disability and may be paid for life[g]	There is a limitation of the weekly amount but not on the total amount	$438.00	450 maximum for all disability[p]	$584.00	Remarriage of spouse, attainment of age 18 of dependent child or 25 if full-time student; 450-week limit for partial dependents
California	3 days	21 days	$1,010.50	104[a]	2/3 of AWW, subject to minimum /maximum rates	$1,010.50	Lifetime	No	$230/ $270	not applicable	$1,010.50	When paid in full or up to age 18, for life to dependent minors
Colorado	3 scheduled days	14 calendar days	$828.03	Duration of TTD disability	66 2/3% PIWW	$828.03	Benefits are for the length of disability and may be paid for life	None	$260.59 is set weekly rate for all scheduled injuries; $828.03 weekly is maximum for calculating unscheduled injuries	400[j]	$828.03	18-21 if dependent is in school, remarriage of a spouse, or death of a dependent

Connecticut	3 days	7 days	$1,168.00	Duration of TTD disability	75% of spendable earnings	$1,168.00	None	None	$996.00	520	$1,168.00	None
Delaware	3 days	7 calendar days	$622.05	unlimited	66 2/3% AWW up to the maximum at the date permanent impairment becomes fixed	$622.05	No	No	$622.05	300	$622.05	When spouse remarries or if minor dependents reach 18 years of age or 25 if attending accredited higher learning institution
District of Columbia	3 days	14 days	$1,288.00	500 weeks for all disability benefits with ability to petition for an additional 167 weeks	66 2/3% PIWW	$1,288.00	500 weeks for all disability benefits with ability to petition for an additional 167 weeks	The first $75,000 in benefits for death or PTD shall be paid by the employer/ insurer. Amounts over $75,000 are paid from death and PTD Trust Fund	$1,288.00	500 week limit for all disability and worker may petition for an additional 167 weeks		$1,288.00
Florida	7 days	22 days	$803.00	104	66 2/3% PIWW	$803.00	Benefits are payable to age 75. If the injury occurred after age 70, benefits are payable during continuance of PTD not to exceed 5 years following determination of PTD	No	$803.00	2 weeks for each % of impairment from 1-10%; 3 weeks from 11-15%; 4 weeks from 16-20%; and 6 weeks for each rating over 21%	$803.00	Maximum payable is $150,000
Georgia	7 days	21 days	$500.00	400 weeks unless catastrophic injury	not applicable	not applicable	not applicable	not applicable	$500.00	300	$500.00	$150,000 for surviving spouse with no dependents
Hawaii	3 days	None	$747.00	Duration of TTD disability	66 2/3% PIWW	$747.00	No	No	$747.00	312	$747.00	312 weeks
Idaho	5 days	TTD exceeds 2 weeks	$594.90	None. TTD continues while in the period of recovery.	67% of AWW	$594.90	No	Weekly rate may change after the first 52 weeks of TTD and each year there-after on Janu-ary 1 based on the increase in the ASWW	55% of the AWSW at the time of injury	500	60% of current avg. state wage or $396.60 wkly-2012	500 weeks for spouse

Table I continued

Workers' Compensation State Laws as of January 2010

	Waiting Period, Jan 10		Temporary Total Disability, Jan 10		Permanent Total Disability, Jan 10				Permanent Partial Disability, Jan 10		Death Benefits, Jan 10	
State	Waiting Period before a worker can receive Indemnity benefits	Retroactive period	Maximum Weekly TTD Benefits	Maximum Length of TTD Benefits (in weeks)	Basis of PTD Calculation	Maximum Weekly PTD Benefits	Maximum Length of PTD Benefits	Limit to Monetary PTD Benefits	Maximum Weekly PPD Disability Benefits	Maximum PPD Benefits for "Unscheduled Injuries" (weeks)	Maximum Weekly Dependency Benefits	Statutory Limit for Dependency Benefits
Illinois	3 days	14 calendar days	$1,261.41	Duration of TTD disability	66 2/3% AWW	$1,261.41	No	No	695.78	500	$1,261.41	$500,000 or 25 years
Indiana	7 days	21 days	$650.00	500	66 2/3% PIWW	$650.00	500 weeks	Yes	not applicable	100% or 500	$650.00	500 weeks
Iowa	3 days	14 days	$1,457.00	Benefits are for length of disability and maybe paid for life	80% of the worker's spendable after tax or NWW	$1,457.00	No	No	$1,340.00	500	$1,457.00	None
Kansas	7 days	21 days	$555.00	225 to 415 weeks depending on type of injury-also maybe a limitation of $130,000 or $155,000 for all indemnity benefits depending on types of benefit paid.	66 2/3% AWW	$555.00	Benefits are for the length of disability and may be paid for life or until maximum of $155,000 is reached.	Yes	$555.00	415 weeks but the first 15 weeks does not count toward this maximum	$555.00	$300,000
Kentucky	7 days	14 calendar days	$736.19	Duration of disability or until receipt of social Security old age and survivor benefits	66 2/3% PIWW	$736.19	No	100% SAWW for injury year	$552.13	425 weeks if rating is 50% or less; 520 wks if rating is over 50%	368.11 for spouse; 552.13 for spouse and child	18/22 if in school
Louisiana	7 days	6 weeks	$577.00	Duration of TTD disability	66 2/3% PIWW	$577.00	Benefits are for the length of disability and may be paid for life	None	$577.00	520	$577.00	Spouse plus 2 children or 3 children
Maine	7 days	14 calendar days	$634.13	520	80% of the worker's spendable after tax or NWW	$634.13	Benefits are for the length of disability and may be paid for life	No	$634.13	520 weeks for the duration of disability if PI rating is greater than athreshold of approximately 13.4%	$634.13	500 weeks or until age 18 for children

Maryland	3 days	14 days	$965.00	Duration of TTD disability	66 2/3% PIWW	$965.00	No	$45k except that benefit shall be paid for the period that the covered employee is permanently totally disabled	$724.00	None	$965.00	144 months or on the date of what would have been the 70th birthday of the deceased employee, provided that a minimum of 5 years of death benefits has been paid
Massachusetts	5 days	21 days	$1,135.82	156	66 2/3% PIWW	$1,135.82	No	No	$1,135.82	not applicable	$1,000.00	None
Michigan	7 days	14 calendar days	$742.00	Duration of TTD disability	80% of the worker's spendable after tax or NWW	$746.00	800 weeks conclusive payment with factual determination therefater	None	not applicable	not applicable	$746.00	500 weeks
Minnesota	3 days	10 days	$850.00	130	66 2/3% PIWW	850.00	No	No	$850.00	No	$850.00	Benefit ends after 10 years or 10 years after the last child is no longer dependent, minimum payable is $60,000
Mississippi	5 days	14 days	$436.68	450	66 2/3% PIWW	$436.68	450 weeks or	$196,506.00	$436.68 until total compensation paid equals $196,506	450	$436.68	450 weeks; remarriage for spouse; age 18-23 for child
Missouri	3 days	14 days	$811.73	400	66 2/3% PIWW	$811.73	No	None	$425.19	400	$811.73	m
Montana	32 hours or 4 days, whichever is less	If disability is 21 days longer	$649.00	Duration of TTD disability	66 2/3% PIWW	$649.00	Payable until retirement	None	$324.50	400	$649.00	Depends on extent of dependency at time of injury/death
Nebraska	7 days	6 weeks	$710.00	Duration of TTD disability	66 2/3% PIWW	$710.00	Payable for the length of disability and may be for life	None	$710.00	300	$710.00	None
Nevada	5 days	5 consecutive days or 5 cumulative days within a 20 day period	$789.74	Duration of TTD disability	66 2/3% pre-injury AMW	$789.74	No	Per maximum compensation limit and formula	$789.74	PPD benefits paid for 5 years or to age 70, whichever is later	$789.74	For a child at 18 or 22 if a full-time student

Table I continued

Workers' Compensation State Laws as of January 2010

	Waiting Period, Jan 10		Temporary Total Disability, Jan 10		Permanent Total Disability, Jan 10				Permanent Partial Disability, Jan 10		Death Benefits, Jan 10	
State	Waiting Period before a worker can receive Indemnity benefits	Retroactive period	Maximum Weekly TTD Benefits	Maximum Length of TTD Benefits (in weeks)	Basis of PTD Calculation	Maximum Weekly PTD Benefits	Maximum Length of PTD Benefits	Limit to Monetary PTD Benefits	Maximum Weekly PPD Disability Benefits	Maximum PPD Benefits for "Unscheduled Injuries" (weeks)	Maximum Weekly Dependency Benefits	Statutory Limit for Dependency Benefits
New Hampshire	3 days	14 days	$1,317.00	Duration of Total disability	60 % PIWW	$1,317.00	Payable for the length of disability and may be for life	None	$1,317.00	350 weeks for a whole person award	$1,317.00	18 or 25 if a full-time student
New Jersey	7 days	7 calendar days	$810.00	400	70% of actual wage at the time of injury	$810.00	Payable for the length of disability and may be for life	None	$810.00	600	$810.00	
New Mexico	7 days	4 weeks	$733.16	700	66 2/3% PIWW length of disability	$733.16	Payable for the rating is less than and may be for life	None	$733.16	500 weeks if the 80%, 700 weeks if rating is greater	$733.16	100% of the SAWW for 700 weeks
New York	7 days	More than 14 days	$772.96	Duration of TTD disability	66 2/3% PIWW	$772.96	No. Benefits are payable for the length of disability which is almost always for life of the claimant	The maximum the injured worker can receive is 2/3 of the worker's AWW at the time of the injury up to the weekly maximum benefit in place at the time of injury	$772.96	Not if date of accident or disability is before March 13, 2007; 525 weeks if date of accident or disability is on or after march 13, 2007	$772.96	n
North Carolina	7 days	21 days	$862.00	Benefit limits have been changed to 500 weeks and can be extended by Commission if employee has sustained a total loss of wage-earning capacity	66 2/3% PIWW	$864.00	Benefit limits have been changed to 500 weeks and can be extended by Commission if employee has sustained a total loss of wage-earning capacity	$862 for scheduled injuries	300	$862.00	500 weeks[o]	
North Dakota	5 days	5 days	$905.00	104	66 2/3% PIWW	$905.00	Payable until retirement at which time benefits may switch to ABP[r].	No	PPI rate multiplied by the maximum body impairment percentage of 100%. Paid as lump sum	100%	$905.00 impairment based on lump sum payment	$300,000 or death

Ohio	7 days	14 calendar days	$809.00	as long as disability lasts	72% PIWW[e]	$809.00	No	No	$269.97	200	$809.00	None
Oklahoma	3 days	Waiting period is not paid	$735.00	156	70% PIWW	$735.00	Payable for the length of disability and may be for life	No	$323.00	500	$735.00	when dependency ends
Oregon	3 days	14 days	$1,120.55	n/a	66 2/3% PIWW	$842.52	Lifetime plus benefits to surviving spouse and children	Maximum weekly $842.52	not applicable	$322,929.15	$1,123.33	None
Pennsylvania	7 days	14 calendar days	$848.00	Duration of TTD disability subject to conversion to partial benefits at 104 weeks[b]	not applicable[q]	not applicable	not applicable	not applicable	not applicable	not applicable	$858.00	n/a
Rhode Island	3 days	None	$972 max as of 9/1/11	Duration of TTD disability	75%of worker's spendable or after tax or NWW	$972 as of 9/1/11	Payable for the length of disability and may be for life	None	$180.00	500	$972, as of 9/1/11	None
South Carolina	7 days	More than 14 days	$704.92	Duration of TTD disability with a maximum of 500 weeks	66 2/3% PIWW	100% of SAWW	500 weeks	500 weeks	Depends on scheduled body part	340	$689.71	500 weeks
South Dakota	7 days	7 calendar days	$648.00	Duration of TTD disability	66 2/3% PIWW[f]	$648.00	For length of disability and can be for life	None	$648.00	312	$648.00	None
Tennessee	7 days	14 days	$867.90	Duration of TTD for physical injuries; 104 weeks for psychological injuries; 104 weeks after the commencement of pain management	66 2/3% PIWW	$789.00	Until Social Security eligibility age or 260 weeks where the date of injury is on or after age 60	No	$789.00	400	$789.00	None
Texas	7 days	2 weeks	$787.00	105c	75% AWW	$787.00	No	No	$551.00	300	$787.00	Minimum of 364 weeks
Utah	3 days	14 calendar days	$747.00	312	66 2/3% PIWW	$635.00	PTD benefits are awarded for life, but PTD status may be reexamined by submitting employee to reasonable medical evaluations; rehabilitation and retraining efforts; disclosure of Federal Income Tax returns	No	$498.00	312	$635.00	312 weeks of combined benefits excluding PTD

Table I continued

Workers' Compensation State Laws as of January 2010

	Waiting Period, Jan 10		Temporary Total Disability, Jan 10		Permanent Total Disability, Jan 10				Permanent Partial Disability, Jan 10		Death Benefits, Jan 10	
State	Waiting Period before a worker can receive Indemnity benefits	Retroactive period	Maximum Weekly TTD Benefits	Maximum Length of TTD Benefits (in weeks)	Basis of PTD Calculation	Maximum Weekly PTD Benefits	Maximum Length of PTD Benefits	Limit to Monetary PTD Benefits	Maximum Weekly PPD Disability Benefits	Maximum PPD Benefits for "Unscheduled Injuries" (weeks)	Maximum Weekly Dependency Benefits	Statutory Limit for Dependency Benefits
Vermont	3 days	10 days	$1,122.00	Duration of TTD disability; insurer must review after 2 years	66 2/3% PIWW	$1,122.00	For duration of total disability-can be for life	No	$1,122.00	405 weeks for non-spinal; 550 weeks spinal	$1,122.00	Varies with dependent
Virginia	7 days	3 weeks	$905.00	500	66 2/3% PIWW	$905.00	Can be lifetime	Applicable comp. rate	$905.00	None	$905.00	500 weeks
Washington	3 days	14 calendar days	$1100.26 for DOI prior to 7/1/11; $1123.78 for DOI 7/1/11 - 6/30/12	Duration of TTD disability	Depends on the option chosen by employee	$1100.26 for DOI prior to 7/1/11; $1123.78 for DOI 7/1/11 - 6/30/12	For length of disability and can be for life	There is a maximum payment for lump sums only, up to $8,500	$1100.26 for DOI prior to 7/1/11; $1123.78 for DOI 7/1/11 - 6/30/12	$183,900.42	$1,123.78	18th birthday or 23rd birthday when enrolled in in school, or disabled
West Virginia	3 days	7 consecutive days	For FY 2012, it is $711.38 on a weekly basis	104	66 2/3% PIWW not to exceed 100% of the AWW in West-Virginia	$676.61	Payable until age 70	No	As of FY 2012, it is $497.97 on a weekly basis	None	As of FY 2012, the maximum weekly benefit is $711.38	Death or remarriage of widow, majority of children
Wisconsin	3 days	7 non-consecutive days	$854.00	Duration of TTD disability	66 2/3% PIWW	$854.00	For length of disability and can be for life	No	$302.00	1,000	$854.00	$256,200
Wyoming	3 days	8 days	$815.00	24 months	66 2/3% actual monthly wage unless they earn less than 73% of the SWAMW and then it is 92% of their actual monthly wages	$543.33	No	No	None	None	Benefits paid monthly	None

a There are some limited exceptions where benefits can be paid for 240 weeks.

b Disability under PA laws means loss of earning power. PA law allows employer/insurer to request "Impairment Rating Examination" after employee has received 104 weeks of full benefit payments. If IRE shows less than 50% impairment based on AMA Guides then benefits are reclassified as partial disability compensation and are subject to a 500-week cap.

c An exception to this amount could be made when an extension of MMI based on spinal surgery is approved by the Division.

d For purposes of this table, "catastrophic Injury" means any injury which is one of the following: (1) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk; (2) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage; (3) Severe brain or closed head injury as evidenced by: (A) Severe sensory or motor disturbance; (B) Severe communication Disturbance; (C) Severe complex integrated disturbances of cerebral function; (D) Severe disturbances of consciousness; (E) Severe episodic neurological disorders; or (F) Other conditions at least as severe in nature as any condition provided in subparagraphs (A) through (E) of this paragraph; (4) Second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face and hands; (5) Total or industrial blindness; (6) Any other injury of a nature and severity that prevents an employee from being able to perform his or her prior work and any work available in substantial numbers within the national economy for which such employee is otherwise qualified, provided, however, that the injury has not already been accepted as a catastrophic injury by the employer and the authorized treating physician has released the employee to return.

e 72% of the workers' pre-injury weekly wage for the first 12 weeks and then 66.67 % thereafter.

f If the weekly wage is below 50% of the SAWW the calculation is wages, less income tax and social security.

g TTD ceases during the time period an employee refuses a suitable job offer.

h All earned income of the injured worker and all employment based retirement income is considered in the calculation of extended benefits.

i KS has a cap of $125,000 for Permanent Total and that cap includes any TTD paid.

j Total TTD and PPD for scheduled and unscheduled cannot be greater than $75,000 if the impairment rating is less than 25% and $150,000 if more than 25%.

k Workers' Compensation benefit provisions apply to injury dates on and after July 1, 2008 to distinguish them from the benefit levels applicable to most of the calendar year payments shown through the report.

l If total amount of weekly compensation is less than $7.00 per week.

m Dependency benefits end at various times depending on level of dependency. Spouse-lifetime or until remarriage. Children-until they meet the age threshold. For cases that fall in the Schoemehl window (Jan 9, 2007- Jun 26, 2008), surviving dependents can claim benefits from SIF instead of deceased employee.

n Benefits end for spouse on remarriage or upon death and end for children upon turning 18, or if still in school, 23, if not blind or physically disabled. If blind or physically disabled then the benefits end when the blindness or physical disability ends, after age 18 or 23 as appropriate. If benefits paid to dependent parents or grandparents, they end upon death. For brothers, sisters or grandchildren at age 18, or, if in school, 23.

o Widower may receive lifetime payments if she is totally disabled at the date of decedents's death and child will receive weekly payments for 400 weeks or until age 18, whichever is longer.

p Except for PTD which is payable for life

q Wage Loss benefits may continue for life, however

r ABP benefits are additional benefits payable. ABP are payable for the length of the disability or until death. Benefit is based on the duration of disability prior to retirement.

PIWW Pre-injury Weekly wage

AWW Average weekly wage

NWW Net weekly wage

SAWW State-wide average weekly wage

AMW Average Monthly wage

Source: IAIABC-WCRI (2011).

Figure 1. 2010 Workers' compensation premium index rates

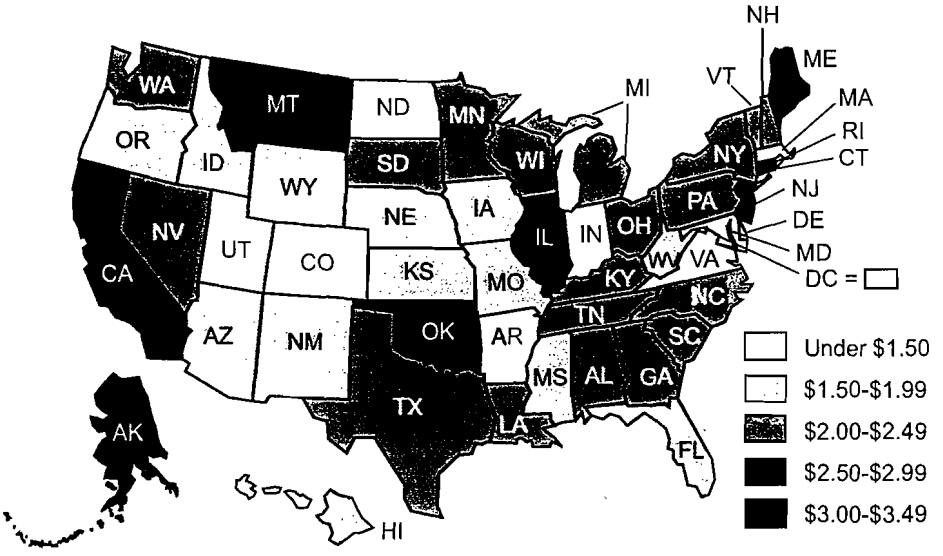

Table 2. Workers' compensation premium rate ranking

2010 Ranking	2008 Ranking	State	Index Rate	Percent of study median	Effective Date
1	2	Montana	3.33	163%	July 1, 2009
2	1	Alaska	3.10	152%	Jan. 1, 2010
3	10	Illinois	3.05	149%	Jan. 1, 2010
4	9	Oklahoma	2.87	141%	11/1/09 state fund, 1/1/10 private
5	13	California	2.68	131%	Jan. 1, 2010
6	20	Connecticut	2.55	125%	Jan. 1, 2010
7	16	New Jersey	2.53	124%	Jan. 1, 2010
8	5	Maine	2.52	123%	Jan. 1, 2010
10	14	New Hampshire	2.45	120%	Jan. 1, 2010
10	8	Alabama	2.45	120%	March 1, 2009
12	17	Texas	2.38	117%	May 1, 2009
12	12	South Carolina	2.38	117%	July 1, 2009
13	19	New York	2.34	115%	Oct. 1, 2009
14	15	Pennsylvania	2.32	114%	April 1, 2009
15	7	Kentucky	2.29	112%	Oct. 1, 2009
16	24	Minnesota	2.27	111%	Jan. 1, 2010
17	3	Ohio	2.24	110%	July 1, 2009
18	4	Vermont	2.22	109%	April 1, 2009
19	34	Wisconsin	2.21	108%	Oct. 1, 2009
20	21	Tennessee	2.19	108%	Nov. 4, 2009
21	18	Nevada	2.13	104%	March 2, 2009
23	32	Michigan	2.12	104%	Jan. 1, 2009
23	22	North Carolina	2.12	104%	April 1, 2009
24	25	Georgia	2.08	102%	July 1, 2009
25	11	Louisiana	2.06	101%	Oct, 1, 2009
26	38	Washington	2.04	100%	Jan. 1, 2010
28	36	South Dakota	2.02	99%	July 1, 2009
28	26	Rhode Island	2.02	99%	Jan. 1, 2010
29	34	Idaho	1.98	97%	Jan. 1, 2010
30	32	Nebraska	1.97	97%	Feb. 1, 2009
31	24	Mississippi	1.96	96%	March 1, 2009
32	32	New Mexico	1.91	94%	Jan. 1, 2010
33	28	Missouri	1.90	93%	Jan. 1, 2010
34	7	Delaware	1.85	91%	Dec. 1, 2009
35	41	West Virginia	1.84	90%	Nov. 1, 2009
36	41	Iowa	1.82	89%	Jan. 1, 2010
37	37	Wyoming	1.79	88%	Jan. 1, 2010
38	45	Arizona	1.71	84%	Jan. 1, 2010
40	36	Hawaii	1.70	83%	Jan. 1, 2010
40	28	Florida	1.70	83%	Jan. 1, 2010
41	**39**	**OREGON**	**1.69**	**83%**	**Jan. 1, 2010**
42	44	Maryland	1.63	80%	Jan. 1, 2010
43	42	Kansas	1.55	76%	Jan. 1, 2010
44	49	Massachusetts	1.54	75%	Sept. 1, 2008
45	46	Utah	1.46	71%	Dec. 1, 2009
47	43	Colorado	1.39	68%	Jan. 1, 2010
47	48	Virginia	1.39	68%	April 1, 2009
48	29	District of Columbia	1.32	65%	Nov. 1, 2009
49	47	Arkansas	1.18	58%	July 1, 2009
50	50	Indiana	1.16	57%	Jan. 1, 2010
51	51	North Dakota	1.02	50%	July 1, 2009

Notes: Starting with the 2008 study, when two or more states' Index Rate values are the same, they are assigned the same ranking. The index rates reflect adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends. Link to previous reports and summaries.

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly.

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440-2082 (10/10/COM)

Lower Indiana Costs/Claim With > 7 Days Of Lost Time: Masks Offsetting Factors

Avg. Cost Per Claim	Indiana	16-State Median	% Difference
Total	$30,358	$34,535	-12%
Indemnity	$9,813	$16,227	-40%
Medical	$17,252	$14,950	15%
Expenses/Claim With Expenses	$3,324	$4,728	-30%

2008/11 Claims With > 7 Days Of Lost Time, Adjusted For Injury/Industry Mix And Wages

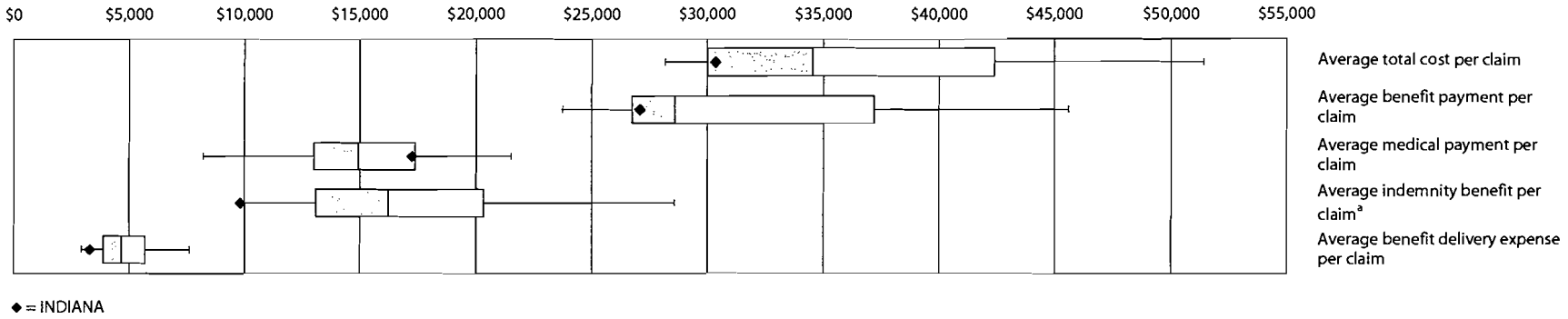
WCRI

5

Indemnity benefits per claim that were 40 percent lower than typical were the main reason for the lower total costs per claim in Indiana, when compared with the typical study state. That result was likely related to system features.

By contrast, medical payments per claim were higher than typical of the 16 study states.

Figure 4 Average Costs for Claims with More Than 7 Days of Lost Time at 36 Months' Average Maturity, 2008/2011



Performance Measure, 2008/2011 Claims	CA	FL	IA	IL	IN	LA	MA	MD	MI	MN	NC	NJ	PA	TX	VA	WI	16-State Median[b]
Average total cost per claim	$38,274	$35,440	$38,464	$48,372	$30,358	$49,364	$28,847	$30,280	$28,181	$32,974	$51,410	$33,631	$43,975	$28,480	$40,761	$31,276	$34,535
Average benefit payment per claim	$30,732	$28,908	$34,533	$43,263	$27,065	$41,399	$24,873	$26,400	$24,116	$27,512	$45,606	$27,820	$38,504	$23,722	$35,879	$28,290	$28,599
Average medical payment per claim	$13,589	$14,466	$15,616	$21,504	$17,252	$18,723	$8,211	$10,607	$9,738	$14,056	$17,036	$15,109	$14,791	$12,450	$18,705	$17,530	$14,950
Average indemnity benefit per claim[a]	$17,143	$14,442	$18,916	$21,760	$9,813	$22,676	$16,662	$15,793	$14,378	$13,457	$28,569	$12,711	$23,713	$11,272	$17,175	$10,760	$16,227
Average benefit delivery expense per claim	$7,438	$6,476	$3,889	$4,984	$3,289	$7,616	$3,849	$3,588	$3,932	$4,283	$5,574	$5,806	$5,392	$4,746	$4,576	$2,926	$4,661

Note: 2008/2011 refers to claims arising from October 1, 2007, through September 30, 2008, evaluated as of March 31, 2011.

[a] The reader should be aware that we report all lump-sum payments as indemnity benefits. We do this to achieve consistency and comparability in this measure across states because lump-sum payments to close out future obligations are rarely separated into medical and indemnity components in the data. In most study states (California, Illinois, Indiana, Iowa, Maryland, New Jersey, North Carolina, Pennsylvania, Texas, and Wisconsin, and Michigan under some circumstances), the second injury fund pays benefits directly to the injured worker once the fund's liability is established, rather than reimbursing the employer or insurer (as in Louisiana, Massachusetts, and Virginia). Our results do not include second injury fund payments; thus, certain indemnity cost measures may be somewhat understated. However, because second injury fund payments typically do not occur until later in the claim, after the employer/insurer obligation has been paid, and because the eligibility requirements are quite restrictive in many states (e.g., applicable only to permanent total disability), we estimate that the magnitude of the understatement is not large, ranging from minimal to 4 percent across the states, and did not materially affect the interstate comparisons that we report. For more discussion on this issue, see *CompScope™ Benchmarks: Technical Appendix, 13th Edition*.

[b] The 16-state median is the average of the states ranked 8th and 9th on a given measure; these states change depending on the measure being evaluated. The median is also shown as the vertical line within the box of the box plot figure for a measure.

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Attachment 2

Indiana Worker's Compensation and the Consumer Price Index

	Weekly WC Benefit	*Hourly Wage for MAX**	*Consumer Index*	
3/1/67	$51	$1.87	**1/1/67**	**100**
3/1/69	$57	2.12		
3/1/71	$60	2.37		
74-76	*Variable Dependent Benefit*			
7/1/76	$104	3.90		
7/1/77	$120	4.50		
7/1/79	$130	4.87		
7/1/80	$140	5.25		
1981 - Increases to $150 in 81 and $162 in 82 were refused				
7/1/83	$156	5.85		
7/1/84	$166	6.22		
7/1/85	$178	6.67		
7/1/86	$190	7.12		
1987 – No increase effective during 1987 but the very large increase in 88 was later enacted.				
7/1/88	$256	9.60		
7/1/89	$274	10.27		
7/1/90	$294	11.02	**1/1/90**	**375.0**
7/1/91	$328	12.30		
7/1/92	$360	13.50		
7/1/93	$394	14.77		
7/1/94	$428	16.05		
1995 – Increases in SB 588 to $440 in 95, $452 in 96, $464 in 97 and $476 in 98 were refused				
1996 – Increases in SB 446 to $440 in 96, $452 in 97, $464 in 98 were refused				
7/1/97	$448	16.80		
7/1/98	$468	17.55	**1/1/99**	**479.7**
7/1/99	$488	18.30	**7/1/99**	**486.3**
7/1/00	$508	19.05	**7/1/00**	**504.4**
7/1/01	*$548*	*20.55*	**7/1/01**	**517.8**
7/1/02	*$588*	*22.05*	**7/1/02**	**524.5**
7/1/03 – HB 1003 increases to $636 in 03 and $674 in 04 failed to pass				
7/1/04 – HB 1309 increases to $668 in 04, $708 in 05 and $748 in 06 failed to pass				
7/1/05 – HB 1536 increases to $600 in 05 and $620 in 06 failed to pass			**7/1/05**	**568.8**
7/1/06	***$600***	***22.50***	***7/1/06***	***593.2***
7/1/07	***$620***	***23.25***		
7/1/08	***$636***	***23.85***		
7/1/09	***$650***	***24.38***		

Over 42 years

WC Weekly Benefit
3/1/67 to 7/1/02 Increase = 1152.9%
3/1/67 to 7/1/06 Increase = 1176.5%
3/1/67 to 7/1/09 Increase = 1274.5%

CPI Increase
1967 to 7/1/01 = 417%
1967 to 7/1/02 = 424%
1967 to 7/1/05 = 468%
1967 to 7/1/06 = 493%
1967 to 7/1/09 = 545%

***Hourly Wage for Maximum Benefit – this figure is the hourly rate which, when multiplied by 40 hours will result in the maximum amount of wages used in computing benefits. The result is that workers making this figure <u>or less</u> receive, TAX FREE, 2/3 of their pre-injury average pay in worker's compensation benefits while they are temporarily totally disabled.**

ICIN
October 10, 2012
Attachment 3

Chapter 141. Captive Insurance Companies

Includes current version of Vermont statutes, constitution & court rules. Browse Table of Contents below or search above

Search all content Specify content to search

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2007 WL 2900286
Only the Westlaw citation is currently available.
United States District Court,
W.D. Tennessee,
Western Division.

In re RECIPROCAL OF AMERICA (ROA) SALES PRACTICES LITIGATION.

Master File No. MDL 1551.Civil Action No. 04-2078.
Sept. 28, 2007.

Attorneys and Law Firms

Dennis E. Goldasich, Jr., Erby J. Fischer, Cross Poole Goldasich & Fisher, LLC, Birmingham, AL, Jere L. Beasley, Joseph H. Aughtman, W. Daniel Miles, III, Beasley Allen Crow Methvin Portis & Miles, Montgomery, AL, William H. Farmer, Farmer & Luna, Nashville, TN, for Plaintiffs.
Danny M. Howell, J. Jonathan Schraub, Paige A. Levy, Sands Anderson Marks & Miller, McLean, VA, Russell E. Reviere, Rainey Kizer Reviere & Bell, Jackson, TN, R. Timothy Muth, Reinhart Boerner Van Deuren, S.C., Milwaukee, WI, Ellen Bass, Joseph A. Ingrisano, Kutak Rock LLP, Washington, DC, Michael A. Condyles, Peter John Barrett, Kutak Rock LLP, E. Duncan Getchell, Jr., McGuire Woods Battle & Boothe LLP, H. Carter Redd, R. Gordon Smith, McGuirewoods LLP, Richmond, VA, David C. Wade, Martin Tate Morrow & Marston, Thomas Lang Wiseman, Wiseman Biggs Bray PLLC, John J. Heflin, III, Bourland Heflin Alarez & Minor, Memphis, TN, for Defendants.

Opinion

ORDER GRANTING MOTION OF DEFENDANTS PATTERSON AND HUDGINS TO DISMISS AMENDED COMPLAINT AND DENYING MOTION TO DISMISS ORIGINAL COMPLAINT AS MOOT

J. DANIEL BREEN, United States District Judge.

INTRODUCTION

*1 Before the Court in this multi-district litigation is the motion of Defendants Kenneth R. Patterson and Carolyn B. Hudgins (Doc. No. 132) in part[1] to dismiss the original complaint filed against them by Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee, in her capacity as Liquidator for Doctors Insurance Reciprocal, Risk Retention Group ("DIR"), American National Lawyers Insurance Reciprocal, Risk Retention Group ("ANLIR") and The Reciprocal Alliance, Risk Retention Group ("TRA") (collectively, the "RRGs"),[2] pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. On August 7, 2006, Flowers filed an amended

complaint, of which Patterson and Hudgins have likewise sought dismissal (Doc. No. 55). Therefore, the original dispositive motion (Doc. No. 132) is hereby DISMISSED as moot with respect to Flowers' claims. *See Harris v. City of N.Y.,* 186 F.3d 243, 249 (2d Cir.1999) (recognizing that "it is well established that an amended complaint ordinarily supersedes the original, and renders it of no legal effect"). At this point, the Court will address the Defendants' motion to dismiss the amended pleading.

FACTUAL ALLEGATIONS

The facts in this litigation have been summarized as follows:

This case arises from the insolvency of a Virginia reciprocal insurer, ROA, and three Tennessee reciprocal risk retention groups that were largely reinsured by ROA, DIR, TRA and ANLIR. ROA was first organized in response to a perceived shortage in the Virginia market of medical liability (especially hospital liability) insurance options. For many years, the company seemed to grow and do well, returning to its hospital-owners substantial dividends. The benevolent period during which this growth occurred emboldened management, especially the enterprising attorney (Crews), who had first organized ROA and served as its general counsel. Together with his law firm, Crews & Hancock, and his associates in senior management and the board of directors (eventually including defendants Bland, Patterson, Kelley, Hudgins, McLean, and Davis, in his capacity as chairman of the board of DIR), Crews took ROA (initially known as [Virginia Professional Underwriters, Inc. ("VPUI") and The Virginia Insurance Reciprocal ("TVIR")]) from a small, single-state hospital insurer to a multi-state major player in the liability insurance market. During this time the company grew in size and complexity, diversifying its coverage by adding physician and lawyer malpractice, as well as workers' compensation and other types of insurance. In due course, the three Tennessee risk retention groups were created to avoid some of the burdens of Virginia insurance regulation and to specialize in some of the newer lines of business (physician malpractice for DIR, attorney malpractice for ANLIR, and health care liability for TRA), enabling segregation of risk as well. Crews participated actively in the management of the four insurance companies which, in many respects, were under common management. However, each was owned by a different group of policyholders/owners. Three of the four reciprocal insurance companies (i.e., DIR, TRA, and ANLIR) also qualified as lightly regulated Tennessee risk retention groups, a key reason for their formation. Those three companies were largely reinsured by ROA, the Virginia reciprocal, so that ultimately the latter became liable for most of their insurance risks.

*2 During the 1970s and 1980s a number of well-publicized insurance insolvencies sensitized the insurance-buying public, especially commercial insureds, to the importance of financial soundness. Ratings accorded insurers by independent organizations, like A.M. Best, took on added value in the marketplace. Crews and his associates understood well the need to address that concern as a precursor to successful competition for lucrative new customers. For a young, and relatively small,

insurer like ROA, the appearance of financial stability could be created without actually amassing the necessary capital and surplus, a daunting and very lengthy process. Instead, they could arrange for a well-respected and well-heeled reinsurer to at least appear to stand behind its obligations through reinsurance. Of great value, this enabled the reinsured, ROA, to utilize Best's rating of the reinsurer. For this role, Crews and his associates selected one of the world's largest reinsurers, Gen Re. From the beginning, Crews had close business and personal ties with Gen Re and its management (including at various times, Reindel, Kellogg, and Seeger). Together these individuals, along with others, formed an informal "*de facto* " partnership to improve the appearance of ROA's balance sheet and stated surplus by ceding business from ROA to Gen Re. ROA was accorded superior ratings from *Best's Insurance Reports* in part because of ROA's reinsurance relationship with Gen Re, which A.M. Best rated A Superior. *Best's Insurance Reports* noted that "ROA's principal reinsurer is Gen Re." From a regulatory perspective, this permitted ROA to reduce the liability it had to recognize on its books by the amount for which the reinsurer would be liable (referred to in the industry as "reserve credit"). By providing ROA with this reinsurance, Gen Re earned lucrative ceding commissions from ROA. But the arrangement was structured so that, in reality, the risk assumed by Gen Re was minimal. Indeed, Gen Re entered into, and participated in, this arrangement with the full expectation that every year it would earn valuable reinsurance premiums with little danger of experiencing a net loss. At times, the illusion of reinsurance was additionally maintained through deceptive financial reinsurance, in which loans from Gen Re to ROA and [First Virginia Reinsurance, Ltd. ("FVR")] were guised as substantial insurance risk of net loss.

Crews and other members of management also sought to minimize regulatory oversight and taxation of ROA, ANLIR, DIR, and TRA and their owners. Toward this end, Crews formed the offshore Bermuda captive FVR to serve as reinsurer for ROA's physicians and attorney liability insurance business (and later, ROA's net retained share of risk on the DIR and ANLIR business), thereby enabling profits on that business to accumulate on a tax deferred basis. Atlantic Security and Witkowski served as FVR's agents in Bermuda. An offshore reinsurer's profits are not subject to United States taxation so long as the reinsurer does no business in the United States. Crews devised the use of FVR as a means to hold profits from ROA's retained business (for use as surplus to policyholders) while sheltering ROA's physician and lawyer subscribers from taxation on those profits until distribution. But, under Virginia law, reserve credit for reinsurance provided by offshore companies can only be taken to the extent of an acceptable security trust funded and maintained in the U.S. Moreover, this reliance by ROA upon FVR as reinsurer brought the latter within the scrutiny of Virginia insurance officials.

*3 Starting in or about 1990, when regulators began asking too many questions about FVR, Crews' law firm and other defendants arranged for Gen Re to remove FVR from the regulators' scrutiny by providing "accommodation" reinsurance to ROA for all of the business that ROA formerly ceded

directly to FVR. Pursuant to this "accommodation reinsurance" arrangement, Gen Re would "accommodate" ROA by acting as a "pass-through" between ROA and FVR, with ROA ceding risk as reinsurance to Gen Re and Gen Re "retroceding" 100% of that risk to FVR. FVR remained the ultimate "retrocessionaire," but the "accommodation" enabled ROA to report only Gen Re (with its strong balance sheet), and not FVR, as a reinsurer of ROA, thereby removing FVR from the scrutiny of regulators. As Gen Re later explained, "Reinsurance assumed by FVR was always intended to be 'accommodation reinsurance.' If this was real reinsurance, rates would have been different.' "

As the insurance enterprise became less lucrative and economic challenges increased, FVR became chronically underfunded to meet its obligations to Gen Re on the risks ceded from ROA to Gen Re to FVR. If FVR had not been removed from scrutiny of ROA's regulators pursuant to the "accommodation" arrangement with Gen Re, ROA's reserve credit for the business ceded would have been at risk, because such a credit could only have been claimed to the extent of FVR's ability to secure its reinsurance obligations.

Unwilling to take on the increased reinsurance risk from ROA's mounting losses, Gen Re eventually demanded in October, 2000, that the "understanding" behind the "accommodation reinsurance" scheme be memorialized in writing-albeit in the 2000 Unreported Side Agreement kept hidden from the public. Subsequently, ROA's losses grew even worse. Gen Re feared the possibility that it would be found accountable for what the outside public thought was "real reinsurance," and thus in late 2000 devised a complicated plan which would "virtually eliminate" Gen Re's reinsurance risk of net loss as if "Gen Re were never there." Effective on or about December 31, 2001, Gen Re ceased providing "accommodation" reinsurance that required it to be at risk for FVR's financial condition. ROA resumed ceding certain risks directly to FVR, and the Wachovia-FVR Trust was established to secure FVR's reinsurance obligations to ROA. Wachovia served as trustee of the Wachovia-FVR Trust[,] which also became chronically underfunded.

Crews' law firm, Crews & Hancock, reaped substantial fees for legal work performed for ROA, which fees ultimately benefitted the partners at Crews & Hancock, including Crews and Bland. Besides Crews, other members of management came and went, but for the relevant years included McLean, Patterson, Hudgins, and Kelley, all of whom benefitted from the business in the way of substantial salaries and perquisites. A lesser, but significant participant was Davis, who served as Chairman of the Board for DIR, for which he, too, was paid a salary.

*4 Independent auditors and certified actuaries for ROA, ANLIR, DIR, TRA, and FVR also came and went. However, for the relevant years, the independent auditor was [PricewaterhouseCoopers, LLP ("PwC")] (whose engagement partner was Stephani) and the certified actuary was Milliman (whose work was performed by Sanders). Milliman (beginning in 1997) and PwC (beginning in 1999) reaped substantial fees for having, and maintaining as clients, ROA, ANLIR, DIR, TRA, and FVR.

Eventually, ROA and DIR experienced extreme financial difficulty, due in large part to the nature of the "accommodation reinsurance" scheme, which enabled the companies to grow at an accelerated rate, and generate disproportionate profits, without ever providing the necessary capital and surplus that is essential to weather the inevitable cycles and developments. In order to maintain the false appearance of ROA's continued financial viability and therefore enable themselves to continue and maximize the benefits they were receiving from their association with ROA/TRG (or, in some instances to receive preferential payments), the Management Defendants (Crews, Patterson, Hudgins, and Kelley), McLean, the Gen Re Defendants (Gen Re, Seeger, Kellogg, and Reindel), Crews & Hancock, Bland, Davis, Witkowski, Atlantic Security, Milliman, Sanders, Stephani, PwC, and Wachovia conspired to participate, and did participate, in various fraudulent schemes

...

The fraudulent schemes included various types of "creative accounting," arbitrary reductions in DIR's and ROA's claim reserves, reinsurance agreements that did not transfer substantial insurance risk of net loss, nondisclosure of modifications to reinsurance agreements that rendered much of ROA's reinsurance receivables from Gen Re illusory, and disguised misappropriations of funds from ROA and the Wachovia-FVR Trust. The defendants appeared to have believed that if they could just conceal ROA's financial troubles long enough, ROA eventually could emerge from a hazardous financial condition without regulators ever being the wiser. Unfortunately, but predictably, things went from bad to worse, and the defendants' success in postponing regulatory intervention resulted in the deepening of ROA's insolvency.

ROA's concealed insolvency finally came to light only after, in late December of 2002, Virginia regulators discovered the 2002 Unreported Side Agreement and its $135 million aggregate cap, and other financial irregularities....

(Deputy Receiver's Resp. and Mem. In Opp'n to Mot. to Dismiss of Def. Ronald K. Davis, M.D. at pp. 1-7) (internal citations omitted). Flowers alleges violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et *seq.;* RICO conspiracy in violation of 18 U.S.C. § 1962(d); as well as fraud; civil conspiracy, unjust enrichment; negligence, breach of fiduciary duty; fraudulent transfers and preferences; misappropriation and negligent handling of trust funds; and malpractice under Tennessee state law.[3]