

WILG Update to the North Carolina Association of Justice Workers' Compensation Section

**Raleigh, NC
December 2, 2010**

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**I. Comparison of North Carolina & Virginia
Workers' Compensation Laws**

**II. Update on the AMA Guides and State Workers'
Compensation Congressional Hearings**

III. WILG's approach to the above issues

I. **Comparison of North Carolina & Virginia Workers' Compensation Laws**

Attorney's Fees

- Unlike North Carolina, attorney's fees are compensated at a maximum of 20% of the settlement or benefits awarded to the injured worker and/or 15% of a permanent partial disability award.
- Some compensation may also be awarded for payment of disputed medical bills. However, that award is either negotiated or ordered against healthcare providers or health insurance companies after unpaid bills are covered.

Occupational Disease Claims

- Since the mid 1990's occupational disease claims that are considered compensable no longer include repetitive trauma cases like synovitis, tenosynovitis, bursitis or various overuse syndromes.
- Carpel tunnel and hearing loss related claims can be compensable with a higher burden of proof.
- Other occupational disease claims are more difficult and do not include aggravation of preexisting conditions.

Scheduled Injuries

- Permanent partial disability benefits are never awarded for back or neck injuries.
- There is no compensation for injuries to important organs.
- There is compensation for injuries to various limbs, vision loss or hearing loss or severely marked disfigurements.

Compensation Rates and Number of Weeks

- The current maximum compensation rate in Virginia as of July 1, 2010 is $\frac{2}{3}$ of the pre-injury average weekly wage not exceeding \$885.
- The minimum compensation rate is \$221.25. However, a lesser amount will be awarded if the actual average weekly wage was less than that number.
- The maximum numbers of weeks that can be awarded for all temporary, total, temporary partial and permanent partial disability benefits combined is never more than 500 weeks except in cases of permanent total.
- Permanent total or lifetime weekly checks can be awarded for brain injured claimants or persons with such significant loss of two limbs that they are virtually unemployable.

Horseplay

- Innocent victims of horseplay do not have a workers' compensation claim.

Falls

- Unexplained falls are not compensable.

II. Update on the AMA Guides and State Workers' Compensation Congressional Hearings

The Congressional hearings testimony could be summarized as follows:

AMA Guides

- The sixth edition of the AMA guides is less favorable than the fifth edition and in fact was a paradigm shift.
- The sixth edition is much more difficult to understand, interpret and apply on a consistent basis.
- The impairment ratings in all AMA guides are not evidence based.
- The guides represent secretive private rulemaking with no transparency.
- The ability to work is not factored into the guide's percentages.

- Consideration should be given to a review by the National Academy of Science/Institute of Medicine regarding the guides or the possible replacement of same.

Trends in Benefits Nationwide

- In 1972 the National Commission of Workers' Compensation Benefits found that state benefit programs were neither adequate nor equitable.
- 19 essential recommendations were made by the commission.
- Subsequent to 1972 there was a favorable reformation period.
- From about 1990 on there was a period of significant reforms or lessening of benefits in many state programs around the country.
- There has been considerable concern as to the quid pro quo or "Grand Bargain" struck between employers and injured workers.
- Various states lessening of benefits have resulted in a shifting of costs from the workers' compensation programs to the SSDI program.

III. WILG's approach to the above issues

- We must recognize that the states ultimately will rise and fall together.
- We must utilize our strength in numbers.
- We will always have appreciation for the need for a federal presence.
- We also must recognize the fact that workers' compensation programs are ultimately state based and subject to being picked off one by one by employer and insurance lobbies - Particularly if we do not join forces to help each other.

How WILG has progressed since its inception 15 plus years ago

- We have nearly 800 members in 50 states.
- We have a vibrant listserv.
- Our Workers' First Watch law journal is a well-regarded scholarly resource.
- Our enhanced committee and organizational structure is a solid foundation.
- Our increased staffing is reaping great benefits every day.
- We have a research director to help WILG on the federal level and to help the states with their legislative issues.

There has never been a more important time for us to work together.