

Colorado Workers' Compensation

The Respondents' Perspective



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Colorado Workers' Compensation - Respondents' Perspective

- Attorney's Viewpoint
- Snapshot
- Not an outline of workers compensation litigation
- Recommend interviewing a workers' compensation claims adjuster

Workers' Compensation No-Fault System



Workers' Compensation No-Fault System

- Exclusive remedy - the right to workers' compensation replaced an injured workers' right to sue.
- "Mutual renunciation of common law tort claims and defenses in favor of a no-fault system and reduced but guaranteed benefits." *Whiteside v. Smith*, 67 P.3d 1240, 1245 (Colo. 2003)

Compensable Injury

- Person only eligible for benefits under Colorado Workers' Compensation Act if there is a compensable injury:
 - Compensable injury is one which arises out of and in the course of employment. § 8-41-301, C.R.S.
 - Course of employment: when injury occurs within the time and place limits of the employment and a connection to a job related function
 - Arises out of employment: when injury is caused by employee's work-related functions.

Compensable Injury



Compensable Injury



Workers' Compensation Benefits

Physician Controlled & Medically Driven

- Medical Treatment
 - Employer “shall furnish” medical treatment “to cure and relieve the employee from the effects of the injury.”
- Temporary Disability
 - Employee typically receives disability benefits until MMI, return to regular or modified employment, medical release to return to regular employment.
- Permanent Disability
 - Based upon medical impairment measured by physician.

Physician Controlled



Medically Driven





Adversarial System



Adversarial System

- Purpose of Workers' Compensation Act is "to assure the quick and efficient delivery of disability and medical benefits to injured workers"
- ". . . at a reasonable cost to employers"
 - ". . . without the necessity of any litigation."
 - § 8-40-102, C.R.S.
- "Hearings shall be held to determine any controversy concerning any issue arising under articles 40 to 47 of this title [the Colorado Workers' Compensation Act]." § 8-43-207, C.R.S.
- "As advocate, a lawyer zealously asserts the clients position." Preamble, Colorado Rules of Professional Conduct

Efficient?

2004 Statistics

- 35,932 Claims Filed
- 29,231 Lost-Time Claims
- 10,073 Applications for Hearing
 - 28% of all claims filed
 - 34% of lost-time claims
- 1,210 Hearings Held
 - 3% of all claims
 - 4% of lost-time claims

“There are three kinds of lies:
lies, damned lies, and statistics.”

Mark Twain
Benjamin Disraeli

Utility Belt



"A jury consists of twelve persons chosen to decide who has the better lawyer." Robert Frost

Medical Records



Medical Records

- “The filing of a claim for compensation is deemed to be a limited waiver of the doctor-patient privilege to persons who are necessary to resolve the claim.” § 8-47-203, C.R.S.
- “Medical information from health care providers who have treated the part(s) of the body or condition(s) alleged . . . during the period five years before the date of injury . . . will generally be considered reasonable.” W.C.R.P. 5-4(C)







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