



WORKERS COMP CLAIMS MANAGEMENT

Presented by

Patrick J. Brennan
Vice President—Engineering Services
Acordia

Workers compensation claims result in more than \$8 billion in direct costs and at least twice that in indirect costs to the construction industry. Despite these staggering figures, management of these claims is often delegated to the insurance adjuster staff. Contractors must become proactive in investigating and managing workers compensation claims, from the first moments after injury occurs until workers are restored to full-time work. This session outlines key strategies for controlling both direct and indirect claim costs, including accident reporting protocols, how to respond when a lawsuit is filed, identifying indicators of possible workers compensation fraud, and more.

Tuesday, November 12, 2002



**Associated General Contractors of America
333 John Carlyle Street, Suite 200
Alexandria, VA 22314
Phone: 703-548-3118
Fax: 703-548-3119
Web site: www.agc.org**

The Associated General Contractors of America, the voice of the construction industry, is an organization of qualified construction contractors and industry-related companies dedicated to skill, integrity, and responsibility. Operating in partnership with its Chapters, the association provides a full range of services satisfying the needs and concerns of its members, thereby improving the quality of construction and protecting the public interest.

AGC is dedicated to improving the construction industry daily by educating the industry to employ the finest skills, promoting use of the latest technology, and advocating building the best quality projects for owners—public and private. A complete list of AGC's products is provided at its bookstore.

As part of its commitment to provide quality services and products, AGC publishes an expansive array of standard form contract documents and related materials that address the different tiered relationships and project delivery approaches found in today's construction environment, such as general contracting, subcontracting, program management, construction management, and design-build.

AGC also provides its contract documents in electronic form through an annual subscription software titled AGC DocuBuilder® Contract Document Software. This software application, which allows you to easily create, amend and customize AGC standardized contract documents, saves time and expense with its advanced features and allows you to avoid the frustrations of paper documents. DocuBuilder® can be installed on a network and enables users to e-mail the documents if they have Adobe Acrobat.

Patrick J. Brennan
Vice President—Engineering Services
Acordia

Mr. Brennan is presenting Workshop D, “Workers Comp Claims Management.” He serves as vice president—Engineering Services at Acordia in New York City. In his 25 years in the environmental, safety, and health field, he has held senior management positions with Memorial Sloan-Kettering Cancer Center (fire protection manager), The Port Authority of New York and New Jersey (senior safety engineer), and Turner Construction Company (manager of environmental safety and health).

Mr. Brennan specializes in evaluating and improving corporate safety programs to facilitate the effective implementation of a comprehensive owner controlled insurance program across the country, with a potential value of \$2 billion to \$3 billion. In addition, Mr. Brennan has participated as a presenter at several national safety conferences.

He has implemented crisis management programs, organized and supervised a coordinated safety management team of both insurance company and privately employed project safety professionals, and analyzed and coordinated comprehensive claims review processes intended to safeguard insureds’ sizable deductible programs.

Mr. Brennan is a Certified Safety and Health Manager, N.S.M.A.; a professional member of the American Society of Safety Engineers; serves on the Associated General Contractors of America Construction Safety and Risk Management Committees as well as the ANSI-A10 National Committee on Safety in Construction and Demolition Operations; and is a member of the Construction Division of the National Safety Council.

Mr. Brennan earned a bachelor of science from Mercy College and a master of arts from New York University.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

WORKERS COMP CLAIMS MANAGEMENT

**Patrick J. Brennan
Acordia**

Prequalify your insurer's (or TPA's) ability to handle claims.

- How do their average claim costs compare to national and state averages?
- How does their average time to close a claim compare to national and state averages?
- What is the average length of disability compared to national and state averages?
- What percentage of the claims goes to litigation compared to national and state averages?
- Do they have a preferred provider network in place (where allowed by law)?
- Are claim files available online?
- Do they have performance standards?
- Do their Claims Department and Loss Control Department interact to avoid repetitive claims?

Getting started—what are the costs of losses?

- Direct loss costs (Workers Compensation premiums, deductibles, down time, OSHA fines/legal expenses, loss of key personnel)
- Indirect loss costs (project schedule delays, public relations, administrative costs, higher future premiums, employee morale)

What can you do to control risk and claim costs?

- Use structured settlement options where possible and economical
- Pay close attention to any evidence of employee fraud. Develop a complete list of fraud indicators with your claim adjusters.
- Hold regular claim meetings with your adjuster
- Develop standards for accident and incident investigation.
- Maintain a strong position for modified duty and return to work.
- Monitor all indemnity claims

Establishing Claim Handling Procedures

- Clear reporting guidelines should be established with the insurer, agent and broker.
- Several individuals should be trained on the procedures.
- Template for claim report should be detailed.
- Procedures should address lawsuits and how to handle them.

Conclusion

Workers Comp Claims Management (for Contracting Exposures)

What Constitutes Claims Management?

Proactive action that will minimize the loss to its lowest, yet most equitable conclusion, including:

1. Prompt claims reporting
2. Completion of incident reports showing as much detail as possible with eyewitness accounts if available
3. Monitoring all treatment and medication to determine if they are appropriate
4. Light duty Return to Work Program if possible
5. Keeping continuous communication open between yourself and your Insurer to make sure case reserves are proper
6. Assuring claims are closed out as quickly as possible
7. Questioning anything that looks like Fraud
8. Make sure claims coded to you are in fact yours

How is all this accomplished?

Many if not most of you do not have an in house Risk Management Department. However most Insurers will establish Claims Handling Procedures..... BUT you have to ask for them.

**Should you pre-qualify your Insurer's (or TPA's) ability to handle claims?
YOU BET YOU SHOULD**

Questions to ask your W.C. Claims Adjuster

- Can they give you their average cost per claim compared to National &/or State averages?
- What is their average time to close a claim compared to National &/or State averages?
- What is the average disability duration compared to National &/or State averages?
- What percent of claims go to litigation compared to National &/or State averages?
- Do they have provider networks in place? (where allowed by law)
- What is their Return to Work policy?
- Are claims files (including adjuster's notes) available on line?
- Do they have Service Performance Standards, and what are they?
- Will they partner with you if Service Performance Standards are not met? In other words will they reduce their claims adjustment fees if they do not perform as promised?
- How does their Claims Department and Loss Control Department interact to avoid repetitive claims?

If you can't get satisfactory answers to the above questions, your ability to manage loss is impaired

Workers Comp Claims Management

Claims Management has often been delegated to the Insurance Company's adjusting staff; not to the contractor.

The annual effects of claims on the construction industry

- **7 million construction employees**
- **According to Liberty Mutual, current direct work place injury cost are \$40.1 Billion, with indirect costs running an average of an additional 3.5 times that cost**
- **Annual contracting volume over \$500 Billion.**
- **Industry employees 5% of national workforce.**
- **Accounts for 20% fatalities 12% disabling injuries.**

Direct verses Indirect costs

The costs of losses is considerably greater than the medical and lost wages reimbursement given an injured employee. Many indirect costs are virtually non-quantifiable, but do affect your bottom line

Direct costs

- **W. C. Premium**
- **Deductible payments (if any)**
- **Damaged equipment**
- **Down time**
- **OSHA fines/legal expense**
- **Accident investigation expense**
- **Modified Duty Program expense**
- **Loss of Key Personal**

Indirect costs

- **Project Schedule delays**
- **Public Relations/Reputation**
- **Administrative Costs**
- **Higher future premiums**
- **Moral**

Risk Control Techniques regarding loss costs.

- **Develop standards for accident & incident investigation. Have a written, step-by-step plan for all employees,**
- **Maintain a strong position for modified duty and return to work .**
- **Monitor all indemnity claims for proper reserves, payments and to be sure they are handled as quickly as possible**
- **Consider surveillance when necessary**

Risk Control Techniques regarding loss Costs.

- **Use structured settlement options where possible & economical.**
- **Develop a complete list of fraud indicators with the insurance company adjusters.**
- **Review indicators at the claim review meeting , or when a particular incident warrant such investigation.**
- **Hold regular claims review meetings with your insurer where all aspects of all outstanding indemnity claims are discussed**

Indicators of Workers Compensation Fraud

- **Conflicting history of accident by claimant, hospital, doctor.**
- **Accident not witnessed OR an overly enthusiastic witness.**
- **Monday morning/Friday evening accident.**
- **Claimant is difficult to contact by mail/phone.**
- **Claim filed just prior to job completion**
- **Claimant not at home during the day**
- **Minor accident incurs major medical expenses**

Indicators of W/C Fraud

- **Claimant has a history of prior claims.**
- **Injuries don't happen in a vacuum**
- **Letter of representation from attorney is dated same day as reported incident OR very soon thereafter.**

Prompt reporting of accident or loss

Failure to provide such prompt notice may seriously inhibit the insurance carrier's ability to investigate and possibly jeopardize insurance coverage

Advantages of prompt reporting of accident or loss

- **Allows insurance company to investigate properly.**
- **Obtaining and preserving evidence that might disappear over time.**
- **Interviewing witnesses while recollection of events is still strong**
- **Claim control from public relation standpoint.**

Advantages of prompt reporting of claims/loss

- **Early management of the claim and intervention.**
- **Possibly dismissing the claim OR reducing the value of the claim.**
- **Statistics show claims settled quickly cost less than claims that drag out**

Who Should Report The Accident

NOT THE FILE CLERK!

A fully trained employee should have responsibility for reporting claims.

Specific Reporting Procedures

- **Clear reporting guidelines should be established with the carrier, agent, broker.**
- **Several individuals should be trained in these guidelines.**
- **The information on the claim report should be accurate & detailed.**
- **The report should contain the signature of someone in authority.**

What To Do When A Lawsuit Arrives

**CALL YOUR LAWYER
or
FILL THE BAGS WITH MONEY**

Lawsuit?

- **Make certain that the service documents reflect the correct names.**
- **Upon receipt of a suit, notify your carrier by phone, and record.**
- **Forward the original summons & complaint to the proper claims office**

AND

Lawsuit?

- **Confirm your telephone notification**
- **Request prompt notification in writing that carrier will file the required appearance on time and defend your interests**
- **Send a copy of the suit papers to your own attorney as some allegations within the suit may not be insured.**

Lawsuit?

- **Evaluate the circumstances surrounding the lawsuit and possibly retain outside counsel (check with insurer) with experience in construction law**
- **Request involvement and immediate communication of any changes of fact**

CONCLUSION

- **The cumulative affect of all actions discussed will reduce claims payments**
- **Ultimately, claims dollars come out of your pocket even if you have no deductible**
- **Only a “Partnership” with your Insurer will yield desired results**
- **Make your Insurance Agent/Broker earn his money by assisting you in all claims matters**
- **Understand that what is measured is improved, and so continuously measure your results**