

**WEST VIRGINIA OFFICES OF THE  
INSURANCE COMMISSIONER**

**WELCOME!**

**WORKERS' COMPENSATION FORUM  
APRIL 8, 2008**

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**West Virginia  
Offices of the Insurance  
Commissioner**

**Workers' Compensation Transition  
Update**

**Deputy Commissioner Bill Kenny**

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**Transition Overview**

- SB1004 passed by the Legislature – January 2005
- NCCI designated as rating organization – October 2005
  - NCCI classification system adopted – July 1, 2006
  - Approved NCCI loss costs – July 1, 2006
  - NCCI Dispute Resolution process implemented – July 1, 2006
  - Proof of Coverage implemented – September 2006
  - Approved NCCI loss costs – July 1, 2007
  - Implemented NCCI Experience Rating plan – July 1, 2007
  - Approved NCCI loss costs – July 1, 2008



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### Old Fund Deficit Reduction Plan

- Legacy liabilities of the Old Fund have been addressed by the Administration and the Legislature.
- Deficit as of Dec. 31, 2005 was \$3.4 billion and has been reduced to \$2.8 billion as of June 30, 2007.
- Legacy funding allows for the debt to be fully funded by 2016.



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### Legacy Liability

#### Annual Dedicated Funding Sources

- Severance Tax \$90,200,000
- Personal Income Tax \$95,400,000
- Video Lottery \$11,000,000
- Self Insured \$ 9,000,000
- WC Policyholders \$45,000,000

Total Annual Revenue \$250,600,000



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### Third Party Administrators for Old Fund

Three Third Party Administrators were selected to administer the Old Fund claims.

- Sedgwick CMS
- Wells Fargo Disability Management
- American Mining Claims Services



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## Residual Market Update

NCCI Holdings, Inc.  
has been named the plan administrator for the  
West Virginia residual market  
and West Virginia will join the  
National Workers' Compensation Reinsurance Pool.



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## State of the Market

- 21 new companies have been licensed to write workers' compensation coverage
- 85 Rates & Forms filings have been received
- Surcharges adjusted to a fixed percentage of regulatory = 5.5% and deficit = 9%
- NCCI named Residual Market Plan Administrator and West Virginia will join the National Workers' Compensation Reinsurance Pool
- Old Fund deficit debt addressed
- Successful 2008 legislative session- addressed code language that was no longer applicable with new private market
- Ready to open a competitive market on July 1, 2008



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## Stephen J. Klingel

President and Chief Executive Officer  
NCCI Holdings, Inc.



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**West Virginia  
 Offices of the Insurance  
 Commissioner**

**Legislative Update**

**General Counsel Mary Jane Pickens**

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**Summary of 2008 Legislative Changes  
 H.B. 4636**

**HB 4636 – Effective From Passage.**

- **W. Va. Code § 23-2C-3 – Regulatory Surcharge.**
- For FY's beginning on July 1, 2008 the regulatory surcharge calculation will change.
- Private carriers will collect surcharge in the amount of 5.5 percent of premium collected, plus total of all premium discounts based on deductible provisions.
- Before June 1, 2013 and every 5 years thereafter the Commissioner will review the regulatory surcharge and determine a new percentage as necessary.
- Amounts collected must be remitted on or before the 25th day of the month after the end of the quarter in which they are collected. Regulatory surcharge for the fourth quarter will be remitted on or before the 1st day of March the following year.

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**Summary of 2008 Legislative Changes  
 H.B. 4636**

- **W. Va. Code § 23-2C-3 – Debt Reduction Surcharge.**
- For policies issued or renewed on or after July 1, 2008, the calculation for the debt reduction surcharge that each private carrier must collect from its policyholders will change.
- The amount is amended from an annually determined amount required to produce 45 million dollars to a surcharge rate of 9% of premium collected plus the total of all premium discounts based on deductible provisions that were applied.

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**Summary of 2008 Legislative Changes  
H.B. 4636**

**W. Va. Code § 23-2C-15.**

- The employer must post a notice on its business premises which includes the name, business address and telephone number of its insurer and of a person to contact with questions about a claim.
- Deletes requirement of having contact information for a WV resident adjuster in the employer's notice.
- OIC interpretation of a "person to contact with questions" should be an employer representative that deals with HR matters.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- W. Va. Code § 23-2C-15 is also amended to delete the provision that insurance carriers must provide information to the OIC related to officers, directors and ten percent or more owners of each carrier's policyholders within 60 days of the issuance of a policy or within 60 days of the date of any changes to the information.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- W. Va. Code § 23-2C-15 is also amended regarding cancellation and nonrenewal notice requirements.
- On July 1, 2008, new carriers doing business in WV may cancel a policy upon 30 days advance written notice and may non-renew a policy upon 60 days advance written notice.
- "Refusal to comply with a premium audit" is added as a basis for carrier cancellation on 10 days notice, which is also the applicable notice for cancellation due to nonpayment of premium.
- BrickStreet may cancel or non-renew as set forth for other carriers, but only after January 1, 2009, except for reasons other than nonpayment or refusal to comply with audit.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- "Proof of Coverage" notification requirements to the OIC have been amended in W. Va. Code § 23-2C-15.
- Notice of new coverage has changed from 10 to 30 days of the effective date of coverage, or the private carrier's receipt of notice of the employer's operations in this state, whichever is later.
- Notice of termination of coverage due to nonrenewal or cancellation has changed from 3 days after to at least 10 days prior to effective date of termination of coverage.
- Termination of coverage at the request of the employer must be given within 10 days of the carrier's receipt of the employer's request.
- Transfer of a policyholder between insurance companies within the same group is not considered a cancellation or refusal to renew a workers' compensation insurance policy



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**Summary of 2008 Legislative Changes  
H.B. 4636**

**W. Va. Code § 23-4-7b. Return to Work.**

- Amendments strike former provisions relating to RTW and replace with rule making authority of OIC.
- Rules will be exempt legislative rules for consideration by the Industrial Council.
- Rules will establish criteria for allowing a worker to return to work on a trial basis following an injury and for the suspension of TTD during the trial RTW period.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

**W. Va. Code § 23-2C-17**

- Is amended to clarify that a self-insured employer and private carriers may enter into a contract to have their plans administered by a TPA.
- The requirement that the TPA must maintain an office in WV is deleted but amendments add that the TPA must be licensed or registered with the Insurance Commissioner.
- Any TPA that directly or indirectly underwrites or collects charges or premiums or adjusts or settles WC claims on residents of WV on behalf of an insurer is subject to the provisions of W. Va. Code § 33-46-1, *et seq.*
- Insurance Commissioner shall purpose rules to regulate the use of TPAs by private carriers and self-insured employers, including rules setting forth mandatory provisions for agreements between TPA's and self-insured employers or private carriers.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

**W. Va. Code § 23-5-1**

- Amendments clarify that parties to a claim are the claimant and, if applicable, the claimant's dependents, and the employer. With respect to claims involving funds created in article two-c of chapter 23, the Insurance Commissioner is a party.
- Insurer has sole authority to act on employer's behalf in litigation of the claim.
- Soon after receipt of the claim, but no later than the date of the initial decision the OIC, carrier or self-insured employer must send the claimant a brochure approved by the OIC setting forth the claims process.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- The time for protesting carrier or self-insured employer decisions to the OOJ has been extended from 30 days to 60 days.
- The 60 day protest period is still jurisdictional and a condition of the right to litigate the finding or action.
- "Employer protest" is retained in connection with decisions based on OP Board findings, state fund claims, and decisions based on PPD recommendations of treating physician under 15% [W. Va. Code § 23-4-7a(c)(1)].



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- W. Va. Code § 23-5-1 is also amended to add a new process to ensure that claimants receive prompt treatment and benefits when a decision to deny benefits is protested and the only controversy relating to compensability is whether the application was filed properly as a new claim or a reopening of a prior claim (aggravation/progression of earlier injury).
- This new process applies only to claims with applications filed on or after July 1, 2008.
- The party that denies the application must begin conditional payment of benefits and must promptly give notice to the OOJ that another identifiable person may be liable.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- The OOJ must promptly order the appropriate persons to be joined as parties to the proceeding.
- At any time during a proceeding in which conditional payments are being made the OOJ may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.
- Conditional payments will not be an admission or conclusive finding of liability.
- OOJ shall direct reimbursement between/among carriers, OIC or self insured employers as necessary after determination is made as to properly liable party.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- This process will toll the statute of limitations.
- OOJ may designate new claim as reopening, effective as of date of filing.
- OOJ may designate reopening as new claim, effective as of date of filing.
- OOJ may designate applications and reopening petitions filed against one carrier, self-insured employer or OIC as a filing made against another carrier, self-insured employer or OIC.



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**Summary of 2008 Legislative Changes  
H.B. 4636**

- W. Va. Code § 23-5-1 is further amended relating to corrected orders. If an order initially denies benefits but is later determined to be not supported by the evidence, the order may still be corrected within the current two year jurisdictional time limit for correcting orders.
- Any protest filed prior to entry of the amended decision is a protest from the corrected decision unless the ALJ enters an order dismissing the protest as moot in light of the correction.
- Corrected orders in the case of fraud may be made at any time (no change from current law).



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**Summary of 2008 Legislative Changes  
H.B. 4381**

- Effective from passage.
- Amendments delete references in code to “state funds” for the assigned risk plan and guaranty fund.
- Assigned risk plan – needs to be in place in time for BrickStreet to begin non-renewals of existing policies in November 2008. If employer is unable to find coverage in the voluntary market for WC coverage, it will need to go to the residual market for this coverage.



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**Summary of 2008 Legislative Changes  
H.B. 4381**

- Amendments require the OIC to provide for the development and administration of an assigned risk plan to provide WC coverage in our state to employers who are unable to find the coverage in voluntary market.
- To qualify for coverage, employer must have been declined by at least 2 insurers who are not affiliated with one another.



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**Summary of 2008 Legislative Changes  
H.B. 4381**

- Rates must be approved by the OIC and must be consistent with classification and rate making methodologies found in the insurance industry and calculated to enable the plan to be self sustaining. Also, rates must be calculated to the greatest extent possible to support coverage without subsidies from employers and insurers in the voluntary market.
- The OIC may designate an entity with experience in developing and administering similar programs in other states to develop and administer WV's assigned risk plan for 3 years. Thereafter, the OIC shall contract with any qualified party to administer the plan.



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**Summary of 2008 Legislative Changes  
H.B. 4381**

- Guaranty Fund – Amendments add workers' compensation insurance to the scope of W. Va. Code § 33-26-1, *et seq.* [W.Va. Insurance Guaranty Association Act].
- Guaranty Association will now administer 3 accounts: Auto, Workers' Compensation, and all other P&C.
- Amendments clarify that limits on covered claims do not apply to obligations of the Association relating to workers' compensation claims.
- If more than one Guaranty Association might afford recovery, amendments state that workers' compensation claims must be sought first from association of claimant's residence.



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**Summary of 2008 Legislative Changes  
H.B. 4079**

- Creates new article in chapter 33 relating to Professional Employer Organizations ("PEO's").
- OIC is charged with licensing and regulation of PEO's.
- PEO's operating in WV on effective date of bill must obtain license from OIC by July 30, 2009.
- OIC may examine or investigate the business and affairs of any PEO under market conduct examination provisions of chapter 33 [W. Va. Code § 33-2-9].



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**Summary of 2008 Legislative Changes  
H.B. 4079**

- Responsibility to obtain workers' compensation coverage must be specifically allocated in the professional employer agreement.
- Insurer must report payroll and claims data for each client-employer to the OIC or statistical agent in a manner that identifies both the client-employer and PEO.
- Insurer must also accurately report coverage status on each client-employer under applicable POC statutes and rules.



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**Summary of 2008 Legislative Changes  
H.B. 4079**

- Workers' compensation coverage may be provided on a master policy basis, but insurer must be able to report experience accurately for each client-employer.
- No workers' compensation coverage may be provided through a PEO on a master policy basis in the residual market.
- Workers' compensation coverage may also be provided on a multiple coordinated policy basis;
- Protection of the exclusive workers' compensation remedy applies to the PEO, the client-employer, and all covered employees irrespective of who obtains the coverage.



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**West Virginia  
Offices of the Insurance  
Commissioner**

**Rules Required by 2008 Legislation**

**General Counsel Mary Jane Pickens**

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**Rules Projects**

- H.B. 4636 [§ 23-2C-17(c)] – TPA's
- The OIC shall propose exempt Legislative rules for consideration by Industrial Council to regulate the use of TPA's by private carriers and self-insured employers, including rules setting forth mandatory provisions for agreements between TPA's and self-insured employers or private carriers.



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### Rules Projects

- H.B. 4636 [§ 23-4-7b(b)] – Return to Work.
- The OIC shall propose exempt Legislative rules for consideration by Industrial Council establishing criteria for providing employers the option of allowing employees, following an injury, to return to work on a trial basis and for the suspension of temporary total benefits during a period of trial return to work.



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### Rules Projects

- HB4079 - Professional Employer Organizations
- By July 1, 2008, the OIC must promulgate an emergency Legislative rule and shall also propose an exempt Legislative rule for consideration by the Industrial Council establishing standards for the reporting of client-employer experience in sufficient detail to enable the assignment of an experience modifier upon termination of the professional employer agreement between the employer and PEO.
- The OIC shall also propose exempt Legislative rules for consideration by the Industrial Council to effectuate the purposes of section relating to provision of workers' compensation through the PEO relationship, including the manner in which notice of default of a master policy must be given to client-employers.



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### Rules Projects

- The OIC may also propose Legislative rules to implement the provisions of the new article regulating PEO's, including but not limited to:
  - (1) Requirements for the issuance and renewal of PEO licenses;
  - (2) Requirements for denying, suspending, revoking, reinstating or limiting the practice of a PEO licensee;
  - (3) Requirements for activating inactive or revoked PEO licenses;
  - (4) Special financial and other licensing requirements for small, start-up PEOs; and
  - (5) A schedule of fees.
- The OIC may promulgate emergency Legislative rules to address any of these matters.



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### Rules Projects

- OIC also anticipates bringing Rules 1 and 18 before Industrial Council in April in order to address some claim handling issues as close as possible to July 1, 2008.
- OIC anticipates presenting for consideration by Industrial Council new rules relating to Utilization Review.



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### West Virginia Offices of the Insurance Commissioner

#### Appeal Process

General Counsel Mary Jane Pickens

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### Workers' Compensation Office of Judges

- The Office of Judges (OOJ) hears protests to decisions entered by private carriers and self-insured employers.
- The OOJ is under the supervision of a Chief Administrative Law Judge who is appointed by the Governor, with the advice and consent of the Senate.
- The Chief Administrative Law Judge oversees Administrative Law Judges and other personnel that are necessary for the proper conduct of a system of administrative review of decisions that have been protested.
- After completion of the administrative review process, the OOJ renders a decision affirming, reversing or modifying the action protested. The OOJ may also remand a claim to a private carrier or self-insured employer for further development of the facts in the case.



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### **Workers' Compensation Board of Review**

- Parties may appeal decisions of the OOJ, as a matter of right, to the Board of Review (BOR).
- The BOR exercises exclusive jurisdiction over all appeals from the OOJ.
- The BOR consists of three members. The Governor appoints, with the advice and consent of the Senate, three qualified attorneys to serve as the three members of the BOR.
- After a review of the case, the BOR issues a written decision in which it can affirm, reverse or modify the decision of the OOJ. The BOR can also remand the case to the OOJ for the taking of new evidence as may be necessary to develop the facts of the case.



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### **West Virginia Supreme Court of Appeals**

- The Supreme Court has discretion whether to hear an appeal of a BOR decision.
- If the Supreme Court accepts a petition for appeal, the parties prepare and file the appeal briefs.
- The Supreme Court may not conduct a de nova reweighing of the evidentiary record.
- If the Supreme Court reverses or modifies a BOR decision, it must state with specificity the basis for the reversal or modification.



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**West Virginia  
Offices of the Insurance  
Commissioner  
  
Fraud Resources  
  
General Counsel Mary Jane Pickens**

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### Fraud Resources

- The OIC has a dedicated Fraud Unit known as the Office of Inspector General (“OIG”).
- All instances of suspected fraud must be reported to the OIG by any person engaged in the business of insurance.
- The fraud reporting form is available on the OIC's website at [www.wvinsurance.gov](http://www.wvinsurance.gov).



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### Fraud Resources

- All claim forms and applications for coverage may contain a fraud warning.
- The fraud warning will be acceptable if it is substantially similar to the following:  
*“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.”*



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### Fraud Resources

- Every insurer shall designate at least one (1) primary contact person but not more than four (4) primary contact persons who shall communicate with the Insurance Fraud Unit on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts.
- Every insurer shall notify the Insurance Fraud Unit in writing of the names, titles, addresses, and telephone numbers of the insurer's primary contact person or persons. Any changes to information relating to the contact person or persons must be reported to the Insurance Fraud Unit within ten (10) days of the changes.



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### Fraud Resources

- Should be the person who will deal directly with the OIG.
- Should not be the phone number of a person who is merely a message taker or forwarder.
- The address should be the mailing address of the person who is the contact, not merely a mail room drop.



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### West Virginia Offices of the Insurance Commissioner

#### Deliberate Intent

Attorney Richard Crynock

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### Deliberate Intent

- The term “mandolidis” refers to the concept of a “deliberate intent” cause of action.
- The West Virginia Workers' Compensation Act gives covered employers a general immunity from employee suits for damages at common law or by statute resulting from work related injuries (W. Va. Code § 23-2-6).



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### Deliberate Intent

- The immunity is lost, however, if an employer acts with deliberate intention to injure an employee [W. Va. Code § 23-4-2(c)(2)].
- If the deliberate intent exception applies, the employee may file an action for damages in excess of the workers' compensation benefits that he or she would receive as a result of the compensable injury.



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### Deliberate Intent

- Until 1978, the “deliberate intention” exception was construed narrowly by the Supreme Court of Appeals of West Virginia.
- An injured employee had to show that the work related injury was inflicted purposefully, willfully, and with specific intent, before the employer lost immunity from suit.



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### Deliberate Intent

- In 1978, the West Virginia Supreme Court decided Mandolidis v. Elkins Industries, Inc., 161 W.Va. 695, 246 S.E. 2d 907 (W.Va. 1978). This decision liberalized the definition of “deliberate intention.” Ever since this decision, civil actions brought in West Virginia under the deliberate intent exception have been known as “Mandolidis” actions.



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### Deliberate Intent

- In 1983, in response to the Mandolidis decision, the West Virginia Legislature amended W. Va. Code § 23-4-2, to provide a statutory definition of “deliberate intention.”
- The 1983 amendment set out alternative ways for an employee to prove the “deliberate intention” exception, which would result in an employer losing tort immunity.



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### Deliberate Intent

- Under the 1983 amendments, an employee could prove that that the employer acted with a “consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. [ W. Va. Code § 23-4-2(d)(2)(i)]
- Alternatively, the employee could prove specified facts about an unsafe working condition to establish the employer’s deliberate intent to injure. [ W. Va. Code § 23-4-2(d)(2)(ii)]. There is a five part test required to prove this theory.



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### Deliberate Intent

- With these changes, it was more difficult for an employer to loose the immunity provided by the Workers’ Compensation Act.
- Since the 1983 legislative amendments, the Court held that W. Va. Code § 23-4-2(c)(2) should not serve to circumscribe a common law Mandolidis claim, which is preserved within West Virginia’s common law tort system.



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### Deliberate Intent

- The Mandolidis claim is filed in Circuit Court, issues of fault are litigated, and there are no statutory limits on the type or amount of compensatory damages. It has none of the administrative, no-fault characteristics associated with a workers' compensation claim.
- The West Virginia Supreme Court has also held that W. Va. Code § 23-4-2(c)(2) is not integrally related to the operation of West Virginia's workers' compensation system. It does not protect or enhance the ability of workers to obtain compensation benefits, i.e., fixed benefits without regard to fault for workplace injuries.



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### Deliberate Intent

- In 2005, the West Virginia Legislature re-visited the deliberate intent statute and made additional amendments.
- Although the first theory, regarding whether the employer acted with a consciously, subjectively, and deliberately formed intention to produce the injury, remained the same, the injured employee now has an increased burden in establishing a cause of action under the second theory which requires the five part test.



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### Deliberate Intent

- Under the five part test, the statute now requires that the employer, prior to the injury (which is new), had actual knowledge of the existence of the specific unsafe working condition (as opposed to the former language which required a subjective realization and appreciation) and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition.



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### Deliberate Intent

- Further, in order to prevail under the five part test, the plaintiff must still show that the unsafe working condition violated a “commonly accepted and well-known safety standard within the industry or business of the employer.” However, the plaintiff must now have competent evidence of written standards or guidelines which reflect a consensus safety standard in industry or business. It is important to note that the standards must now be written.



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### Deliberate Intent

- The statute now provides that the employer must intentionally expose an employee to an unsafe working condition.
- Although the statute makes it clear that the plaintiff does not have to have file an underlying workers' compensation claim in order to file a deliberate intent suit, it is clear that the plaintiff's injuries or death must have been compensable under the workers' compensation statute, even if no workers' compensation claim has been filed.



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### Deliberate Intent

- Previously, the “Employers' Excess Liability Fund” was established under Article 4C of Chapter 23 of the West Virginia Code, as a vehicle to provide coverage for employers subject to Chapter 23 who may be subjected to liability for excess damages because the injury of an employee results from the deliberate intention of the employer to produce the injury or death. This fund and its obligations were transferred to BrickStreet on January 1, 2006.



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### Deliberate Intent

- BrickStreet Insurance is required by the provisions of W. Va. Code § 23-4C-6 to offer insurance to provide for the benefits required by Article 4C until at least June 30, 2008. After that time, BrickStreet may choose to not offer this coverage. Currently, BrickStreet provides this coverage by special endorsement.
- New private carriers, however, entering the market after July 1, 2008, are not required, by statute, to offer this type of coverage as part of their workers' compensation policies.



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### Deliberate Intent

- New private carriers entering the market on July 1, 2008, are not required by statute to offer "deliberate intent" coverage as part of the required coverage under Chapter 23 of the West Virginia Code.



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**West Virginia  
Offices of the Insurance  
Commissioner**

**PTD Process**

**Attorney Richard Crynock**

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### PTD Process

- Traditionally, the processing of permanent total disability (PTD) claims was separated into two distinct processes.
- The first process was created for those applications for PTD benefits that had a date of injury on or before May 11, 1995. These cases have been known as the "Old Law" PTD cases.
- The second process was created for those applications for PTD benefits that had a date of injury on or after May 12, 1995. These cases have been known as the "New Law" PTD cases.



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### PTD Process

- Given the passage of Senate Bill 2013 by the West Virginia Legislature in 2003, the difference between Old Law and New Law PTD cases was largely abolished, unless the application for PTD benefits was received on or before June 30, 2003.
- As new carriers entering the West Virginia market on July 1, 2008, you will be handling PTD applications which have been filed on or after July 1, 2003.
- As such, the focus of this discussion will be how to handle PTD applications received, by you, on or after July 1, 2008.



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### PTD Process

- A carrier needs to receive an application for PTD benefits.
- After receiving the application, you will need to make sure that the claim in which the PTD application was filed was not barred for benefits.
- For the most part, the claim will be open for consideration of benefits if the application was received within 5 years of the initial permanent partial disability (PPD) award or, in a case in which no PPD award was granted, within 5 years of closure.



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### PTD Process

- After making sure that the application was timely filed, then you need to determine if the claimant met the threshold requirements for PTD award consideration.
- The threshold requirements are: (a) the claimant must have been awarded the sum of 50% in prior PPD awards; (b) the claimant must have suffered a single occupational injury or disease which results in a finding by the former Workers' Compensation Commission that the claimant has suffered a medical impairment of 50%; or (c) the claimant has sustained a 35% statutory disability pursuant to the provisions of W. Va. Code § 23-4-6(f).



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### PTD Process

- If the claimant does not meet the threshold requirements for PTD award consideration, issue a decision denying reopening of the claim.
- If the claimant does meet the threshold requirements, you will need, if appropriate, to arrange for examinations of the claimant, and obtain all pertinent records concerning the claimant's medical history.



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### PTD Process

- In the past, this information would be forwarded to the Interdisciplinary Examining Board (IEB) to determine if the claimant was eligible for a PTD award.
- The IEB terminated upon termination of the Workers' Compensation Commission (12-31-05) and, by statute, all administrative and adjudicatory functions performed by the IEB shall be performed by a reviewing body (such as a private carrier), for those claims over which it would have jurisdiction.
- W. Va. Code § 23-4-6(j) notes that a reviewing body (RB) must employ or otherwise engage adequate resources, including medical professionals, to perform the functions of the former IEB.



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### PTD Process

- In terms of administrative processing, the RB must state its initial recommendations, in writing, and allow the parties 30 days to respond, in writing, to the initial recommendations.
- The RB shall review any responses and issue its final recommendations.
- The final recommendations shall be effectuated by the entry of an appropriate decision by the private carrier of self-insured employer.



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### PTD Process

- Turning to the actual evaluation process, the RB must determine whether the claimant has: (a) suffered whole body medical impairment of 50% or more from either an occupational injury or occupational disease (or from a combination of occupational injuries and diseases); or (b) sustained a 35% statutory disability pursuant to W. Va. Code § 23-4-6(f).
- If the claimant does not meet either the 50% or 35% requirement, the request for PTD benefits must be denied.



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### PTD Process

- If the claimant does meet the 50% or 35% threshold, the RB continues the review on a vocational basis.
- In particular, a "disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability."



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### PTD Process

- As part of the vocational consideration, the comparability of pre-injury income to post-disability income will not be a factor in determining permanent total disability.
- In addition, the geographic availability of gainful employment within a driving distance of 75 miles from the residence of the employee or within the distance from the residence of the employee to his or her pre-injury employment, whichever is greater, will be a factor in determining permanent total disability.



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### PTD Process

- Following the vocational review, if the RB determines that the claimant is not entitled to PTD benefits, the carrier must issue a ruling denying the request for PTD benefits.
- On the other hand, if the RB determines that the claimant is entitled to PTD benefits, the carrier must issue a decision granting PTD benefits.
- If granted, the date of onset of the PTD benefits is the date when a properly completed and supported application for PTD benefits was filed.
- Also, the PTD benefits will terminate when the claimant reaches 70 years of age.



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**West Virginia  
Offices of the Insurance  
Commissioner**

**Surcharges and Claims Index**

**Assistant Commissioner Mike Riley**

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## Premium Algorithm

WV's Code § 23-2C-3E provides for the deficit reduction and regulatory surcharges to be assessed on only those premiums received for coverage under Chapter 23 (i.e. State Act workers' compensation coverage). Premiums received by private market carriers for coverage for the Federal Act (i.e. USL&H, Admiralty, FELA, Fed Black Long) and premiums for excess employer liability remain subject to the premium rates and the surcharge under Chapter 23 of the West Virginia Code. Under no circumstances shall any premium be subject to both the surcharge under Chapter 23 and the rates and surcharge under Chapter 23 of the West Virginia Code.

1	State Act Manual Premium	[(SUBJECT PAYROLL/100)*RATE] (State Act Premium Only, Excludes Federal Classification Codes F & M)
2	Federal Acts Manual Premium	[(SUBJECT PAYROLL/100)*RATE] (Federal Acts Premium Only - USL&H Act, Admiralty Law and FELA (F & M classification codes))
3	Supplementary Disease (Roundy, Abrasive, Sanitization) (State Act)	[(SUBJECT PAYROLL/100)*DISEASE RATE] (% Applied to the portion of State Act Premium Only, Excludes Federal Classification Codes F & M)
4	Supplementary Disease (Roundy, Abrasive, Sanitization) (Federal Act)	[(SUBJECT PAYROLL/100)*DISEASE RATE] (% Applied to the portion of Federal Acts Classification Codes F & M classification codes)
5	USL&H Exposure for non-F classification codes	[(SUBJECT PAYROLL/100)*RATE]*USL&H FACTOR
6	<b>TOTAL MANUAL PREMIUM</b>	Total of all Class Code Premiums - (Rows 1 + 2 + 3 + 4 + 5)
7	Waiver of Subrogation Factor (State Act)	Row 6 * 1.31 * Waiver Rate (%) (Applied to the portion of Total State Act Manual Premium where waiver is applicable, subject to minimum charge)
8	Waiver of Subrogation Factor (Federal Acts)	Row 6 * 1.31 * Waiver Rate (%) (Applied to the portion of Total Federal Acts Manual Premium where waiver is applicable, subject to minimum charge)
9	Employers Liability (EL) increased limits factor	% applied to Total Manual Premium
10	Employers Liability (EL) increased limits charge	(Balance to EL increased limits minimum premium)
11	FELA	(Factor applied to the portion of Manual Premium where Admiralty/FELA coverage is applicable)
12	Employers Liability/Voluntary Compensation fee charge	(Coverage in Monopolistic State Funds)
13	Small Deductible Credit (State Act)	Row 6 * 1.31 * Deductible Credit (%) (State Act Premium Only)
14	Small Deductible Credit (Federal Acts)	Row 6 * 1.31 * Deductible Credit (%) (Federal Acts)
15	<b>TOTAL SUBJECT PREMIUM</b>	Row 6 + 7 + 8 + 9 + 10 + 11 + 12 + 13 + 14
16	Experience Modification (Modified Premium - State Act)	Row 15 * 1.3 * 7 - 13 * (Emod Factor) (State Act Premium Only)
17	Experience Modification (Modified Premium - Fed Acts and EL)	Row 15 * 1.3 * 8 + 9 + 10 + 11 + 12 + 14 * (Emod Factor) (Federal Acts and EL Premium)
18	<b>TOTAL MODIFIED PREMIUM</b>	Row 16 + 17

## Premium Algorithm

18	<b>TOTAL MODIFIED PREMIUM</b>	Row 16 + 17
19	Surcharge Rating Factor (State Act)	Row 18 * (1.38 credit to or 1.18 debit to) (State Act Premium Only)
20	Surcharge Rating Factor (Federal Acts & EL)	Row 18 * (1.38 credit to or 1.18 debit to) (Federal Acts and EL Premium Only)
21	Supplemental Disease Exposure (Asbestos)(F&M)(State Act)	[(SUBJECT PAYROLL/100)*DISEASE RATE] (% Applied to the portion of State Act Premium Only, Excludes Federal Classification Codes F & M)
22	Supplemental Disease Exposure (Asbestos)(F&M)(Federal Act)	[(SUBJECT PAYROLL/100)*DISEASE RATE] (% Applied to the portion of Federal Acts Classification Codes F & M classification codes)
23	Atomic Energy Radiation Exposure(EOC)(State Act)	[(SUBJECT PAYROLL/100)*Cancer Assigned Charge] (Charge for non-radiation catastrophe loading)(State Act)
24	Atomic Energy Radiation Exposure(EOC)(Federal Act)	[(SUBJECT PAYROLL/100)*Cancer Assigned Charge] (Premium Only, Excludes Federal Classification Codes F & M)
25	Charge for non-radiation catastrophe loading(F&M)(State Act)	[(SUBJECT PAYROLL/100)*CATROPHIC RATE] (% Applied to the portion of Federal Acts Classification Codes (F & M classification codes))
26	Aircraft Seat Surcharges	(See passenger seat surcharges)
27	Balance to Minimum Premium (State Act)	(Balance to minimum premium at Standard Limits) (State Act)
28	Balance to Minimum Premium (Admiralty, FELA)	(Balance to minimum premium at Standard Limits) (Admiralty, FELA)
29	<b>TOTAL SURCHARGE PREMIUM</b>	Row 19 + 20 + 21 + 22 + 23 + 24 + 25 + 26 + 27 + 28
30	Premium Discount(F&M)(State)	Row 18 * 21 + 24 + 26 + 27 * Premium Discount Factor (State Act Premium Only)
31	Premium Discount(F&M)(Fed and EL)	Row 18 * 20 + 23 + 25 + 28 * Premium Discount Factor (Federal Acts and EL Premium Only)
32	Cost Share Disease Charge (State)	[(SUBJECT PAYROLL/100)*DISEASE RATE] (Disease portion for state benefits only)
33	Cost Share Disease Charge (Fed)	[(SUBJECT PAYROLL/100)*DISEASE RATE] (Disease portion for federal benefits only)
34	Expense Constant	[(PAYROLL/100)*RATE]
35	Foreign Expenses	[(PAYROLL/100)*RATE]
36	Domestic Terrorism, Earthquakes and Catastrophes Indefinite Accident (DTIC)	[(PAYROLL/100)*RATE]
37	<b>ESTIMATED ANNUAL PREMIUM</b>	Row 29 - 30 - 31 + 32 + 33 + 34 + 35 + 36
38	WV Regulatory Surcharges	(See 8. Regulatory Surcharges Calculation)
39	WV Deficit Reduction Surcharges	(See 9. WV Deficit Reduction Surcharges Calculation)
40	WV Fine and Casualty Surcharges	(See 9. WV Fine and Casualty Surcharges Calculation)

- a. Regulatory Surcharges Calculation  
Row 19 + 20 + 21 + 24 + 25 + 27 - 30 + 34 + 35 + 36 \* Published Reg Surcharges %
- b. Deficit Reduction Surcharges Calculation  
Row 19 + 20 + 21 + 24 + 25 + 27 - 30 + 34 + 35 + 36 \* Published Deficit Reduction Surcharges %
- c. WV Fine and Casualty Surcharges  
Row 38 + 39 + 40 \* WV Fine Casualty Surcharges 0.55%

① Rows 20 + 22 + 23 + 25 + 26 + 27 + 33 are subject to the premium rates of WV's Code Chapter 23

## Premium Algorithm

- Although presentation is detailed the framework for arriving at Estimated Premium should be what carriers are accustomed to in other states
- Presented in this manner to serve 2 purposes
  - How premium should be built
  - How to treat WV's Taxes and Surcharges and program accordingly
- Surcharge applicability requires the tracking of certain premium elements separately.



### Surcharge Applicability Rules

- No premium taxes paid for State Act WC premiums
- In lieu of premium taxes, two separate WC surcharges are assessed (Debt Reduction and Regulatory Surcharges)
- Regulatory Surcharge = 5.5%
- Debt Reduction = 9%
- **Not all Premiums reported as Line 16 premiums on a carriers P&C annual statement are subject to the WC surcharges**



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### Which premium is subject to what taxes or surcharges

- Must look to the underlying benefits provided
- State Act coverage is subject to WC surcharges
- Federal Acts coverage is not subject to WC surcharges, but is subject to Ch 33 premium taxes
  - USL&H, Admiralty, FELA etc.
  - Advisory class codes add the suffix "F" or "M"
- Employers Liability coverage is not subject to WC surcharges, but is subject to Ch. 33 premium taxes
- Federal Coal Mine Health and Safety coverage (FBL) is not subject to WC surcharges, but is subject to Ch. 33 premium taxes
- Mandatory Foreign and Domestic Terrorism Premium endorsement coverage are subject to WC surcharges



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### Deductible Credits and Surcharges

- Must add back any premium reduction associated with a deductible credit prior to determining WC surcharge assessable premium
- Reason the deductible premium credit amount is added back is that the Self-insured community is also subject to WC surcharges
- Additional information available at
  - [www.wvinsurance.gov](http://www.wvinsurance.gov) "Workers' Compensation Surcharges Summary"
  - WV Code Ch. 23-2C-3(f)
  - WV Rule 85-6
  - Michael.Riley@wvinsurance.gov



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### WC Surcharges FAQs

- WC Surcharge rates must correspond with the effective date of the controlling policy
- WC Surcharge remittances are made at the same time premium taxes are remitted (April 25, July 25, Oct 25, and Mar 1)
- New tax forms are being finalized and will be mailed to all licensed carriers prior to July 1, 2008
- WC Surcharges are to be reflected on each premium invoice, regardless of payment interval
- Each WC Surcharge shall be listed as a separate line item



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### Claims Index

- Purpose is to provide a uniform system for gathering injured workers claims information and making available to other insurers
- Maintained by the OIC
- Contains basic demographic data by SSN to assist insurers in obtaining contact information of other insurers who possess detailed info of a prior claim
- Claims index is populated using EDI Reporting
- Claims index application are available online at [www.wvinsurance.gov](http://www.wvinsurance.gov)



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### EDI Reporting – FROI / SROI

- WV requires FROI and SROI reporting
- WV utilizes EDI Release 3
- No WV state specific data elements
- EDI Implementation Guide available at [www.wvinsurance.gov](http://www.wvinsurance.gov)
- WV contracts with Claims Harbor for EDI reporting
- Compliance with FROI reporting requirements is required when an insurer begins writing in WV.



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### EDI Reporting – FROI / SROI

- SROI data reporting is required beginning 07/01/08. If needed, WV will permit additional time for testing and phase-in of SROI reporting. This grace period ends 12/31/08. SROI reporting must retroactively include data back to the initial underwriting in WV
- Prior approval from WVOIC is required if the SROI testing will extend past the date when the private carrier enters the WV market
- Testing of the SROI data must be successfully completed prior to the carrier sending information



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**West Virginia  
Offices of the Insurance  
Commissioner**

**Managed Care Network**

**Dr. James Becker**

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### Overview of Managed Health Care Plans and Workers' Compensation Care

- The unique nature of work injuries
- Accessing specialty care
- Maximizing recovery
- Coordinating the return-to-work
- Tracking performance



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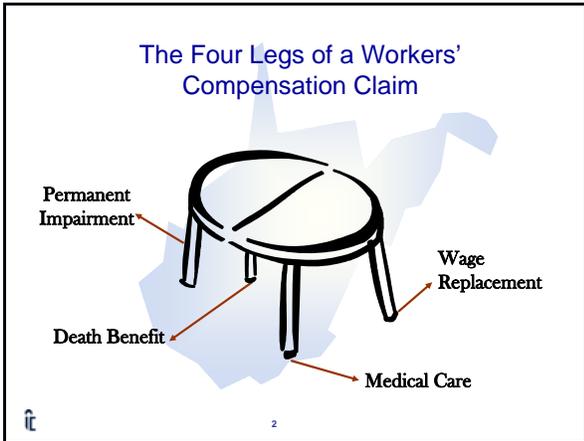
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### Managed Care Network Approval Process

- Application process
- How do we determine network adequacy?

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### Managed Health Care Plans

- If injured workers are to be channeled into a network of providers, then the network must be an integral part of an approved workers' compensation managed health care plan (MHCP)
- MHCP applications are available in two options and may be found at: <http://www.wvinsurance.gov/wc/medical/ManagedHealthPlans.htm>
- Non-Fiduciary (PPO and/or Network Only)
- Fiduciary (HMO)
- MHCP applicant may request approval by county or the entire state. MHCP's may only operate in the counties for which they are approved
- Eight workers' compensation MHCP's are currently approved, and others are in the application process. Approved plans and their contact information are located at: <http://www.wvinsurance.gov/wc/medical/wvapprovedplans.htm>

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## Managed Health Care Plans

- An approved MHCP may deviate from the workers' compensation OIC Maximum Reimbursement Fee Schedules. Maximum fee schedules may be found at: <http://www.wvinsurance.gov/wc/medical/FiscalYear2006.htm>
- Two particular Rules govern in addition to WV Code Chapter 23.4.3.:
  - Series 85 Rule 20 – Claim Management and Treatment Guidelines
    - <http://www.wvsos.com/csrdocs/worddocs/85-20.doc>
  - Series 85 Rule 21 – Managed Health Care Plans
    - <http://www.wvsos.com/csrdocs/worddocs/85-21.doc>



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## Managed Health Care Plans

When an approved managed health care plan contracts their plan to a client, the client is required to utilize the CM, UR, QA, etc. procedures as established in the MHCP. Typically the MHCP administers these procedures on behalf of its client. If the client chooses to perform these procedures itself, it may do so by adopting and implementing said procedures as approved for the MHCP. In such cases, the MHCP is required to provide oversight of these procedures and include the results in its QA process and reporting. In these instances, the contract between the MHCP and the client should clearly delineate the actions and responsibilities that will be performed by both parties. Additionally, the MHCP should further notify the OIC and comment as to how the MHCP intends to fulfill the oversight and other responsibilities of its client relationship. If the client of a MHCP intends to utilize its own CM, UR or QA procedures without adhering to the MHCP procedures, the client will be required to file their own MHCP application.



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## Managed Health Care Plans

- If a carrier has access to an approved MHCP, it is **mandatory** that all employers covered by that carrier use their MHCP.
- MHCP applicant must be licensed in WV through Secretary of State's Office and provide OIC with either a Certificate of Authority (for foreign corporations) or a Certificate of Existence (for domestic corporations).
- If carrier, payor and/or provider have any payment, billing or coding questions they should be addressed between carrier, payor or provider as the OIC is the regulator and cannot resolve these types of issues.
- All WV healthcare practitioners must use the Uniform Credentialing and Re-credentialing Application Forms. These forms may be found at: [http://www.wvinsurance.gov/credentialing/uniform\\_cred\\_instructions.htm](http://www.wvinsurance.gov/credentialing/uniform_cred_instructions.htm)
- Please contact the Medical Rates & Plans Division of the OIC for additional questions or concerns at: 304 558-6279 ext. 1233.



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### Rule 20 Medical Management

- 85CSR20 went into effect June 14, 2004
- It remains the key treatment guideline for WV claims
- Covers the full scope of reporting, diagnosis, treatment and rating of work-related conditions
- Special sections address chronic pain, opiate use, psychiatric and impairment ratings



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### Rule 20 Medical Management

- Conditions not covered in Rule 20: asthma, specific toxic exposures, traumatic brain injury
- Use of other medical guidelines to manage claims
- Examples: FDA recommendations, ACOEM guidelines, ODG, National Guidelines Clearinghouse
- Explain the facts clearly and logically!



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### Medical Fee Schedule

- Medicare-based fee schedule
- Serves as a "maximum allowable"
- Managed Health Care Plans are NOT subject to our fee schedule



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### Permanent Partial Awards

- West Virginia remains an **AMA Guides 4<sup>th</sup> Edition** State
- Rule 20 further addresses permanent partial impairment awards in section VII.
- Carpal Tunnel Syndrome is capped at a maximum of 6% per side
- Spine rating is performed using first ROM and then placement into the diagnosis tables included in the Rule



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### Rule 20 and the 4<sup>th</sup> Edition

- "All evaluations, examinations, reports, and opinions with regard to the degree of permanent whole body medical impairment which an injured worker has suffered shall be conducted and composed in accordance with the "Guides to the Evaluation of Permanent Impairment," (4<sup>th</sup> ed. 1993), as published by the American Medical Association."

» WV 85CSR20-65.1



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### Independent Medical Evaluations

- "Upon termination of the Commission, no registration is required of independent medical examiners"
- "IMEs are required to verify and provide proof of their ABMS or AOA certification"
- "In turn,...(the carrier) is required to maintain this proof of certification.."

» 85CSR20 5.9a.



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### Role of IMEs

- Determine if the injured worker has reached Maximal Medical Improvement
- Rate permanent impairment
- Evaluate causality
- Offer second opinion and treatment redirection
- Build documentation in the file



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**Dennis Kokulak**  
NCCI State Relations Executive



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### Item Filings Approved in West Virginia

<u>Item Filings</u>	<u>Effective Date</u>
01-WV-2005—Forms Manual	July 1, 2006
02-WV-2005—West Virginia Terrorism Risk Insurance Act of 2005	January 1, 2006
02-WV-2006—Basic Manual	July 1, 2006
03-WV-2006—Dispute Resolution Process	July 1, 2006
06-WV-2006—Experience Rating Plan	July 1, 2007
08-WV-2006—West Virginia Basic Manual Classifications	July 1, 2007
09-WV-2006—Revision to Basic Manual Classification to Charitable or Welfare Organizations and Bottling Operations	July 1, 2007

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### Item Filings Approved in West Virginia

<u>Item Filings</u>	<u>Effective Date</u>
01-WV-2007—West Virginia Short Rate Cancellation Rule (Waiver)	July 1, 2008 – June 30, 2009
02-WV-2007—West Virginia Workers' Compensation Premium Algorithm	July 1, 2007
03-WV-3007—Appendix E Table of Classifications by Hazard Groups	October 1, 2007
04-WV-2007—Revision of Experience Rating Plan Rule 5-A: Employee Leasing - PEOs	September 1, 2007
05-WV-2007—National Endorsements: WC 00 04 04 WC 00 04 06A WC 00 04 07 WC 00 04 08	July 1, 2008

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### Item Filings Approved in West Virginia

<u>Item Filings</u>	<u>Effective Date</u>
06-WV-2007 (A)—Revision to Basic Manual Rule 3-A and West Virginia Premium Algorithm	July 1, 2008
08-WV-2007—Basic Manual Schedule Rating	January 1, 2008
09-WV-2007—Retrospective Rating Plan	July 1, 2008
B-1387A—Revisions to Basic Manual Classifications – Amendment	October 1, 2007
B-1397—Revision to Basic Manual Classifications and Rules	July 1, 2007
B-1405—Terrorism Risk Insurance Reauthorization Act of 2007	January 1, 2008
P-1405—Terrorism Risk Insurance Reauthorization Act of 2007 Endorsement	January 1, 2008

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### Upcoming Filings

- Classification Filings
- State Special Cancellation Endorsement
- TRIPRA
- Adoption of national codes: coal and stevedoring
- PEO Rules
- Residual Market Filings
  - WCIP
  - LSRP
  - ARAP
  - VCAP



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### State Specific Classification Codes

<u>Class Code</u>	<u>Description</u>
9449	<b>Board of Education—Students—Unpaid Work-Based Training Program</b> Pay for such trainees shall be a fixed sum of \$200 per person per month
4565	<b>Carbon Mfg.</b> Applied to manufacturing carbon from burning gas, oil, or similar products. Drilling wells, erecting or dismantling derricks; manufacturing casing head gas to be separately rated.
9448	<b>Rehabilitation Services—Participants—Unpaid Work-Based Training Program</b> Pay for such trainees shall be a fixed sum of \$200 per person per month

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### Experience Rating Premium Eligibility

<u>Effective July 1, 2007</u>	<u>Effective July 1, 2008</u>
\$3,500 / \$7,000	\$4,500 / \$9,000

**Projected impact of eligibility increase on state rating population**



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### POC Requirements

Proof of Coverage (POC) timeliness requirements for policies effective July 1, 2008 and subsequent:

<u>Policy Document</u>	<u>Timeframe</u>
New Business, Renewal, Annual Rerate, included state schedule pages and endorsement	Within 30 days of policy effective date
Endorsement issued after Policy Effective Date	Within 30 days from endorsement issuance date
Cancellations	10 days prior to cancellation effective date
Reinstatements	Within 30 days from reinstatement issuance date
Non-renewals	Not required as WV is a non-continuous coverage state

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### Loss Cost Development

Cary Ginter, ACAS MAAA  
NCCI State Actuary



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### NCCI West Virginia Loss Cost Filings

#### ➤ July 1, 2006

- No experience rating values included
- BrickStreet Mutual estimate of the July 1, 2006 payroll (6-month policies) used to achieve overall loss cost level change
- After Appeals deadline and review of the revised payroll distribution, the loss costs were not recalibrated for January 1, 2007 policies



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## NCCI West Virginia Loss Cost Filings

- July 1, 2007
  - Approved as filed
  - Experience rating values included
  - Change applied to all-outstanding policies (necessary due to policy staggering)
- July 1, 2008
  - Approved as filed
  - Used Financial Call data as of 12/31/2006
    - Previously used fiscal-accident year data as of 6/30/2006 provided by BrickStreet Mutual
  - Retrospective rating values included



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## Overall Loss Cost Level Change

- Calendar-accident year data
- Paid losses
- Loss development
  - Adjusted to reflect reform and other system changes
  - Tail factors judgmentally selected
- Trend selected based on other NCCI states
- Private Carrier LAE Provision based on seven regional states
- Benefits Change
  - Estimated increase in Maximum Weekly Benefit



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## Distribution of Overall Change to Classes

- West Virginia had 94 class “groups”, but NCCI class plan has nearly 600 classifications
- No standard classification exceptions in West Virginia previously
- West Virginia Workers’ Comp Statistical Plan data under NCCI class system
  - Received first submission (6 months) in March 2008



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**Distribution of Overall Change to Classes:  
Use of Seven Regional States**

- Started with average classification loss costs from seven regional states
  - Alabama, Kentucky, Maryland, N. Carolina, S. Carolina, Tennessee, and Virginia
- Estimated difference in benefits levels between West Virginia and regional states using average loss cost (ex Coal Mine); applied this adjustment and balanced to current overall average loss cost
- Other adjustments incorporated (e.g., LAE)
- Swing limits of +/- 25% applied
  - Test correction process applied to ensure overall change based on WV experience is achieved



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**July 1, 2008 Loss Cost Changes:  
Top Ten Premium Classes**

<u>Classification</u>	<u>7/1/2007 Loss Cost</u>	<u>7/1/2008 Loss Cost</u>	<u>% Change</u>
Coal Mine—Underground, NOC	\$28.84	\$26.62	-7.7%
Coal Mine—Surface	\$8.69	\$8.89	+2.3%
Carpentry	\$11.28	\$11.55	+2.4%
Hospital: Professional Employees	\$1.02	\$1.05	+2.9%
Trucking—Local Hauling Only	\$6.76	\$7.28	+7.7%
Clerical Office Employees	\$0.24	\$0.23	-4.2%
Drivers, Chauffeurs and Their Helpers NOC—Commercial	\$4.13	\$3.98	-3.6%
College—All Other Employees	\$2.17	\$2.19	+0.9%
College—Professional Employees and Clerical	\$0.34	\$0.34	0.0%
Excavation and Drivers	\$5.12	\$5.32	+3.9%

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**Experience & Retrospective Rating Values**

- NCCI experience rating plan implemented July 1, 2007
  - Experience rating (ER) formula changed
  - ER values (ELRs and D-ratios) determined using similar method to loss costs
  - Off-Balance estimated & impact included in loss costs
- NCCI retrospective rating plan effective July 1, 2008



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### Coal Mine Disease Loss Costs

- Two state specials covering only State Act Coverage discontinued effective July 1, 2008
- Frequency and severity approach applied
  - Data provided by BrickStreet used for State Act disease loss costs
  - Data provided by the U.S. Dept. of Labor employed for Federal Act disease loss costs



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**James R. Nau, CPCU, ARM, WCP**  
**General Manager**  
**NCCI Residual Market**



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### Our Goal

- *To maintain self-funded residual markets in accordance with HB 4381.*
- *To provide high quality services aided by automation.*



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## The Plan

NCCI's Workers' Compensation Insurance Plan (Plan) is the basic instrument through which eligible employers that would otherwise be unable to obtain necessary insurance coverage can secure workers' compensation insurance. The Plan includes filed and state-approved rules that govern assignment, administration, eligibility, and policy issuance requirements.

- Establish Eligibility
- Process Applications
- Ensure Equitable Distribution
- Select Servicing Carriers
- Collect/Maintain Policy Data
- Interpret Plan Rules
- Pricing and Rating Programs
- Regulator Communication
- Carrier Audits and Monitoring
- Identify Plan Participants
- Provide/Manage Dispute Resolution



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## RMAPS® Online Application Service

- 92% of Applications Received on-line
- Same day turn around with complete information



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## Carrier Standards, Selection, Oversight, and Performance

- Assigned Carrier Performance Standards
- Servicing Carrier Competitive Selection Process
- Oversight
  - Visitations
  - Servicing Carrier Operations Reporting (SCOR)
  - Self Audits
  - On-Site Audits



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### Reinsurance Mechanism

- Servicing Carriers will be reinsured through quota share reinsurance agreements administered by the National Workers' Compensation Reinsurance Association
- All workers' compensation carriers must participate based on voluntary workers' compensation written premium in West Virginia



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### On-line Resources at ncci.com

- Residual market Circulars for Plans and Pools
- **SCSOS<sup>SM</sup> Service**
- Residual Market Management Summary
- Pool Data Online
- Pool Uncollectible Premium
- Reinsurance Pools Results and Information (RPRI)
- Residual Market Quarterly Results
- Servicing Carrier Reference Guide
- Noncompliance/Compliance Data



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### 2008 Residual Market Implementation Timeline (Tentative)

- File Workers' Compensation Insurance Plan
  - Issue Servicing Carrier RFP
  - OIC Makes Servicing Carrier Selections
  - File Residual Market Rates and Rating Plans
  - Conduct Agent Education Workshops
  - Ready to Process Applications
  - Residual Market Opens
- April  
May  
August  
August  
September  
November  
January 2009



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**Question and Answer Session**

**Deputy Commissioner Bill Kenny**  
**Assistant Commissioner Michael Riley**  
**General Counsel Mary Jane Pickens**  
**Associate Counsel Richard Crynock**  
**Dr. James Becker**  
**NCCI State Relations Executive Dennis Kokulak**  
**NCCI State Actuary Cary Ginter**  
**NCCI Residual Market Manager James Nau**



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**CONTACT INFORMATION**

**West Virginia Offices of the Insurance  
Commissioner**

**1-888-TRY-WVIC**  
**1-888-879-9842**

**[www.wvinsurance.gov](http://www.wvinsurance.gov)**



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