

FUNDAMENTALS OF WORKERS' COMPENSATION AND EMPLOYMENT LAW

FEBRUARY 13, 2025

HEIDELBERG STEINBERGER BURROW & ARMER, P.A.

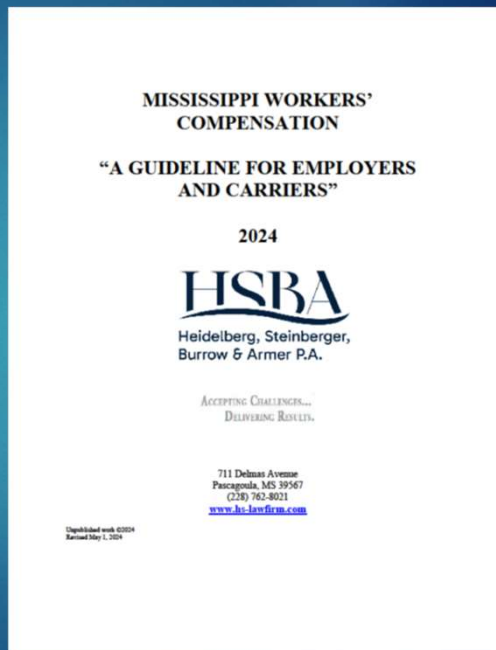
FEATURING

TRISTAN R. ARMER,
ESQ.

MYRA
CUNNINGHAM,
ESQ.

INTRODUCTION

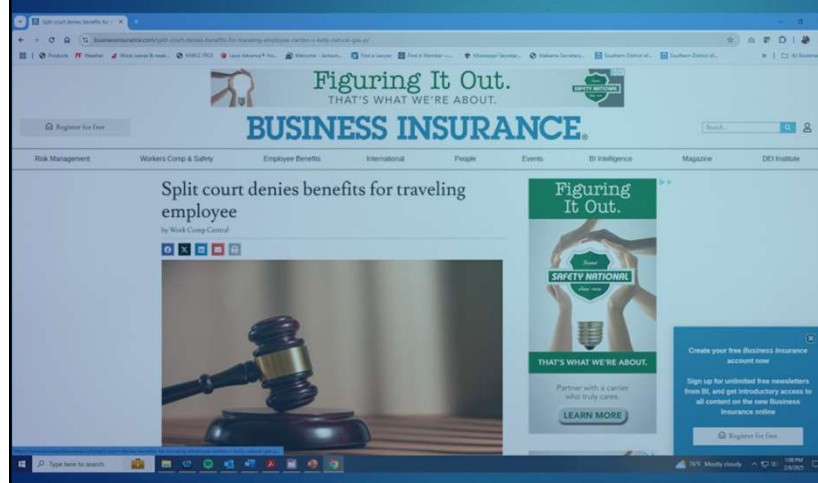
- ▶ The 2025 Guidebook is available for download on our website under the “webinar” tab.



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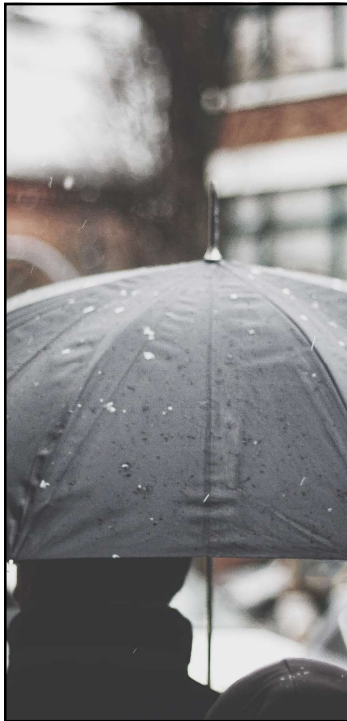
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NEW CASE



- ▶ Rambo v. KNGP LLC
- ▶ MS. Ct. of Appeals; Decided – 3/15/2024
- ▶ Rehearing/Cert. Denied – 10/7/2024

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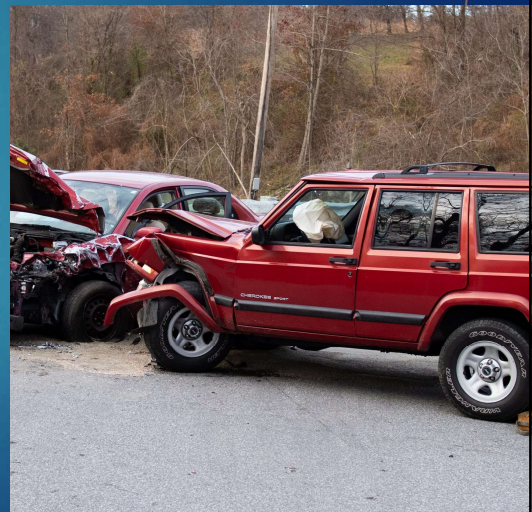
Rambo v. KNGP LLC

- Gas pipeline installers
- Work 3 hours away from home
- Company Truck for travel
- Company paid per diem & for motel rooms
- "Rainy Day Policy" - Unwritten
- 3 Employees took Mid-Week, Unauthorized Trip Home
- Oops, No Rain-Out Called Next Day
- Accident on Trip Back to Job - Early A.M.; other driver at fault; died at scene

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Rambo v. kngp llc

- Accident Thursday, Work Friday & Butt Chewing Meeting on Monday
 - ▶ Fired Foreman, Days Off for Employees
 - ▶ No Records
- Worker's Compensation Claim
 - ▶ "Coming & Going Rule"
 - ▶ Exception for "Employer Furnishes Transportation"
- Denied Claim Because Trip was not "An Accident Arising in the Scope and Course of Employment"
- Petition to Controvert – Discovery – Lawyers!!



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Rambo v. kngp llc

- Injured worker sought his own treatment;
- Neck Surgery –
- Retropharyngeal Hematoma after Surgery;
- Brain Dead
- Catastrophic



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Rambo v. kngp llc

Discovery:

- ▶ No Written Rain Out Policy
- ▶ No Written Motel Check-In/Check-Out Policy
- ▶ HR Manager Used old Forms for "Driver's Responsibility" Policy –
 - ▶ Did not address limits of use
- ▶ Discipline Meeting for Leaving Motel was Undocumented
- ▶ GPS Equipped Truck – Not Monitored nor Reports Preserved

Trial:

- ▶ Great Company Owner, Honest, Concerned
- ▶ Former/Retired Employees Testified about "Unwritten Policies" – "Everyone Knew"
- ▶ Co-Employee Admitted Unwritten Policy to Stay at Hotel
 - ▶ But "Went home anyway 'cause they wouldn't pay us."
- ▶ Case Law from 1963 – Almost identical
- ▶ ALJ – Found not a work-related accident
- ▶ Full Commission Split 2-1
 - ▶ More Like 1.75 to 1.25 with "concurrency"

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RAMBO V. KNGP LLC

1. COURT OF APPEALS –
 - a. 6-4 Decision
 - b. Not a Work Accident
2. SUPREME COURT OF MISS.
 - a. DENIED CERT.
3. THEME – WHO SETS THE LIMITS OF THE WORKPLACE

TAKEAWAYS (MBA Final Exam)

Coming & Going Rule:

General Rule

Many Exceptions

Burden to Prove Exception is Claimant's

Control of Medical Treatment

Claimant's Choice in Mississippi

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A "TAD LESS" NEW CASE

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KROGER CO. V. PYBUS
MISSISSIPPI COURT OF APPEALS
DECIDED SEPTEMBER 28, 2021

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KROGER CO. V. PYBUS

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▶ FACTS

- ▶ Kathy Pybus is a 66 year old grocery clerk
- ▶ Ms. Pybus was knocked to the floor by a customer and injured her pelvis
 - ▶ Date of Injury: May 26, 2015
 - ▶ Had two surgeries
- ▶ Declared MMI (Maximum Medical Improvement)
- ▶ Her doctor said she was completely healed

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KROGER CO. V. PYBUS

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▶ FACTS cont'd

- ▶ Doctor released Ms. Pybus to return to her normal activities with restrictions
- ▶ Ms. Pybus returned to work at former job within restrictions
- ▶ Received raises since injury so her earnings were more than at the time of the injury
- ▶ Employer/Carrier paid temporary total disability benefits
- ▶ Employer/Carrier denied permanent disability benefits

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KROGER CO. V. PYBUS

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- ▶ TRIAL BEFORE THE ADMINISTRATIVE LAW JUDGE
- ▶ Witnesses
 - ▶ Kathy Pybus
 - ▶ High School Diploma
 - ▶ Work History
 - ▶ 12 years in a grocery deli
 - ▶ 5 years in a grocery bakery
 - ▶ Working only because Kroger accommodated her restrictions
 - ▶ She reported continued pain and difficulty performing her job

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KROGER CO. V. PYBUS

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- ▶ TRIAL BEFORE THE ADMINISTRATIVE LAW JUDGE
- ▶ Witnesses cont'd
 - ▶ James D. Smith
 - ▶ Store manager
 - ▶ He admitted Kroger accommodated restrictions
 - ▶ He admitted Ms. Pybus received a raise in accordance with the union contract
 - ▶ Ms. Pybus was doing a good job

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KROGER CO. V. PYBUS

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- ▶ TRIAL BEFORE THE ADMINISTRATIVE LAW JUDGE
- ▶ Witnesses cont'd
 - ▶ Kathy Smith- vocational expert for Ms. Pybus
 - ▶ Restrictions are sedentary to light duty
 - ▶ Completed a "Loss Of Access Report"
 - ▶ "Loss of Access Report" provides a percentage of the labor market no longer available to an injured worker
 - ▶ It is a statistical analysis based upon a local, regional and nationwide market
 - ▶ There is no testing
 - ▶ No real jobs identified
 - ▶ It is based upon age, job history and transferable skills
 - ▶ Smith's opinion: 96.6 % Loss of Access to the labor market

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KROGER CO. V. PYBUS

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- ▶ TRIAL BEFORE THE ADMINISTRATIVE LAW JUDGE
- ▶ Witnesses cont'd
 - ▶ Angela Malone- vocational expert for Kroger
 - ▶ Restrictions are light to medium duty
 - ▶ Conducted tests
 - ▶ Noted Ms. Pybus has no limitations doing sedentary jobs
 - ▶ LOSS OF ACCESS is not the only way to determine access to labor market
 - ▶ Ms. Pybus is employable and has transferable skills
 - ▶ Ms. Malone identified actual jobs Ms. Pybus could perform

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KROGER CO. V. PYBUS

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- ▶ TRIAL BEFORE THE ADMINISTRATIVE LAW JUDGE
- ▶ Witnesses cont'd
 - ▶ Bruce Brawner - third vocational expert
 - ▶ His report was admitted into evidence
 - ▶ Restrictions are light to medium duty
 - ▶ Conducted tests
 - ▶ Actual jobs Ms. Pybus could perform were identified

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KROGER CO. V. PYBUS

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- ▶ THE LAW
- ▶ Where an injured worker returns to her same or similar employment and earns the same or higher wages, a rebuttable presumption of no loss of wage earning capacity arises
- ▶ The law encourages Employers to allow injured workers to return to work

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KROGER CO. V. PYBUS

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- ▶ THE LAW CONT'D
- ▶ The presumption can be rebutted with evidence of:
 - (1) An increase in general wages;
 - (2) An injured worker has more maturity and training;
 - (3) An injured worker is working longer hours;
 - (4) Employer is paying same or more out of sympathy for its employee; and
 - (5) The character of post injury wages are unpredictable.
- ▶ Any factor which causes post injury wages to be less of an indicator of earning capacity will be considered
 - ▶ This includes continued pay and loss of access to the job market

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KROGER CO. V. PYBUS

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- ▶ THE LAW CONT'D
- ▶ Where a claimant at Maximum Medical Improvement reports back for work, and the Employer refused to reinstate or rehire him or her, then it is presumed the Claimant has met the burden of showing total disability
 - ▶ In this case, the value of total disability was 450 weeks times \$435.54 or \$195,993.00 (less disability payments made)

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KROGER CO. V. PYBUS

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- ▶ THE DECISIONS
- ▶ THE ADMINISTRATIVE LAW JUDGE
 - ▶ The presumption of no permanent loss of wage earning capacity applies
 - ▶ Ms. Pybus is earning the same or more than her pre-injury earnings
 - ▶ Employers are encouraged to allow injured workers to return to work
 - ▶ Permanent benefits are denied
 - ▶ Ms. Pybus appealed to the Commission

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KROGER CO. V. PYBUS

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- ▶ THE DECISIONS CONT'D
- ▶ THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION
 - ▶ The presumption of no permanent loss of wage earning capacity was rebutted
 - ▶ Ms. Pybus:
 - ▶ Has restrictions she did not have before the injury
 - ▶ Is being accommodated by the Employer
 - ▶ Has continued pain

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KROGER CO. V. PYBUS

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- ▶ THE DECISIONS CONT'D
- ▶ THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION
 - ▶ Post injury earnings are an unreliable indicator as to wage earning capacity
 - ▶ Commission relied upon the LOSS OF ACCESS model
 - ▶ Ms. Pybus was entitled to permanent disability benefits
 - ▶ \$63,963.00 at 142.14 a week for 450 weeks
 - ▶ Kroger appealed to the Mississippi Court of Appeals

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KROGER CO. V. PYBUS

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- ▶ THE DECISIONS CONT'D
- ▶ THE MISSISSIPPI COURT OF APPEALS
 - ▶ WHAT DID THEY DECIDE?

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KROGER CO. V. PYBUS

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- ▶ THE DECISIONS CONT'D
- ▶ THE MISSISSIPPI COURT OF APPEALS
 - ▶ THE COMMISSION WAS CORRECT
 - ▶ Ms. Pybus returned to her employment in an accommodated manner
 - ▶ She was 66 (age), work restrictions (light) and had continued pain
 - ▶ The presumption of no permanent loss of wage earning capacity was rebutted
 - ▶ Ms. Pybus suffered a loss of access on the open labor market
 - ▶ Affirmed the award of \$63,963.00

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KROGER CO. V. PYBUS

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- ▶ TAKEAWAYS
 - ▶ ADA job descriptions are recommended
 - ▶ This Is one of the first decisions to rely upon the Loss of Access Model to support an award
 - ▶ There will be more awards to employees who are returned to work with accommodations
 - ▶ The decision of an employer to allow an injured employee to return to work will be more difficult
 - ▶ It will still be prudent most of the time to allow injured workers to return to work with accommodations

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THE ELEMENTS OF A CLAIM 27

- ▶ Section 71-3-7
- ▶ There are three essential elements:
 - Injury
 - Disability
 - Causation
- ▶ Claimant bears initial burden of proof
- ▶ In cases before July 1, 2012, disputed issues resolved in favor of the Claimant
 - ▶ Allegedly – parties are presumed to be on “equal ground”

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THE ELEMENTS OF A CLAIM 28

Job Related Injury

- ▶ “Injury” defined in Section 71-3-3(b)
- ▶ Aggravation Rule
- ▶ *Rathborne* corollary
- ▶ Normal wear/tear is not compensable
- ▶ Previously, law presumed the Claimant's uncontradicted version was true; however, 2012 changes to the Act *should* place claimant and employer/carrier on equal ground



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THE ELEMENTS OF A CLAIM 29

Disability - § 71-3-3(i)

- ▶ Defined as: "incapacity to earn wages"
- ▶ Occupational rather than medical incapacity
- ▶ Claimant must demonstrate inability to secure other employment
- ▶ Presumptions
 - ▶ RTW, then no disability (which can be rebutted)
 - ▶ No RTW, then 100% or total (which can be rebutted)
- ▶ Occupational disability must be supported by medical findings
- ▶ Four classifications of disability

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THE ELEMENTS OF A CLAIM 30

Causation

- ▶ Claimant bears the burden of proof
- ▶ Medical evidence is generally required
 - ▶ May rely on medical records and circumstantial evidence as to causation
 - ▶ Must rise beyond mere speculation
- ▶ After July 1, 2012, medical records must accompany Petition if claim denied

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SPECIAL CASES

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1. Found Dead Presumption
2. Heart Attacks
3. Occupational Disease
4. Emotional Injuries:
 - a. Mental/Physical
 - b. Physical/Mental
 - c. Mental/Mental
5. Hernia -

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Benefits

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BENEFITS

33

- ▶ Disability
- ▶ Medical Benefits
- ▶ Maintenance During Vocational Rehabilitation
- ▶ Death Benefits
- ▶ Funeral Expenses

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DISABILITY

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- Compensation for Disability
 - ▶ Disability compensation is either temporary or permanent, total or partial, scheduled or non-scheduled
 - ▶ Maximum weekly compensation is $66 \frac{2}{3}$ of Mississippi's average weekly wage

For 2025, Mississippi's "Max Rate" is \$630.73

Maximum Indemnity Exposure for 2025:

$\$630.73 \times 450 \text{ weeks} = \$283,828.50$

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DISABILITY

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- Temporary Total Disability
 - $66 \frac{2}{3}$ of the AWW not exceeding maximum weekly rate
- Waiting Period of 5 days before compensation must be paid
 - does not have to be consecutive
- Temporary Partial Disability
 - $66 \frac{2}{3}$ of the difference between the AWW and earning after injury

Days	Amount of Compensation
1-5	no compensation
6-14	pay for each day off work
After 14	pay beginning on DOI
Note:	Days do not have to be consecutive

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DISABILITY

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- Permanent Total Disability
 - PTD is $66 \frac{2}{3}$ of AWW subject to maximum rate x's 450 wks
 - Relation-Back Rule Applies
- Permanent Partial Disability
 - Scheduled Benefits
 - Statute body parts paid based upon a schedule
 - At MMI, doctor awards anatomical rating
 - Unscheduled Benefits
 - Impairment Rating means little
 - Loss of Wage Earning Capacity (Voc.Loss)

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DISABILITY

- Permanent Partial Disability
 - ▶ Scheduled Benefits
 - ▶ The statute provides for all body parts to be paid based upon a schedule (e.g., an arm is 200 wks)
 - ▶ At MMI, Doctor awards anatomical rating (%)
 - ▶ Must pay anatomical rating (e.g., 25% x's 200 wks = 50 wks)
 - ▶ Minimum Payment

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DISABILITY

- ▶ Permanent Partial Disability Cont'd
 - ▶ If claimant RTW with no wage loss - only anatomical rating is paid
 - ▶ If claimant cannot return to usual duties, there is a presumption of 100% industrial loss of use
 - ▶ E/C has burden to rebut presumption
 - ▶ Factors include claimant's education, training, age, and continuance of pain in usual or other employment

Meridian Professional Baseball vs. Jensen

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DISABILITY

- ▶ Non-Scheduled Benefits
 - ▶ Award is $66 \frac{2}{3}$ of difference between AWW and PLWEC subject to maximum limitation
 - ▶ Medical anatomical rating not important
 - ▶ RTW decision very important!
 - ▶ If employee RTW at same rate of pay there is a presumption of no PLWEC
 - ▶ If employer refuses RTW, presumption of PTD

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DISABILITY

- Examples of Disability Payments

Ex. 1: Temporary Total Disability
Assume: AWW \$400.00
 $\$400.00 \times 66 \frac{2}{3} = \266.64 wk

Ex. 2: Permanent Total Disability
Assume: AWW \$400.00
 $\$400.00 \times 66 \frac{2}{3} = \266.64 wk
 $\$266.64 \times 450 = \$119,988.00 \text{ (undiscounted)}$

Note: All payments are subject to the maximum limitations of the Act

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DISABILITY

Ex. 3: Permanent Partial Disability

For Scheduled Injury

Assume: AWW \$400.00

Rating of 10% left upper extremity

No industrial loss of use

$\$400.00 \times 66 \frac{2}{3} = \266.64

10% of 200 weeks (arm) = 20

$20 \times \$266.64 = \$5,442.80$ (undiscounted)

Note: All payments are subject to the maximum limitations of the Act

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DISABILITY

Ex. 4: Permanent Partial Disability

For Unscheduled Injury

Assume: AWW \$400.00

Vocational Assessment: \$300.00 wk

$\$400.00 - \$300.00 = \$100.00$

$\$100 \times 66 \frac{2}{3} = \66.66

$450 \times \$66.66 = \$29,997.00$ (undiscounted)

Note: All payments are subject to the maximum limitations of the Act

42

MEDICAL BENEFITS

43

- ▶ Statute requires Employer/Carrier to furnish medical treatment
- ▶ Medical benefits for life
- ▶ To be compensable, the treatment must be:
 - (1) reasonable;
 - (2) necessary; and
 - (3) causally related to employment

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MEDICAL BENEFITS

44

- ▶ Selection of Physician
 - ▶ Employer selects first
 - ▶ Employee accepts/rejects employer selection
 - ▶ Employee can select treating physician within geographical area of residence or place of injury
 - ▶ Treating physician can refer to one specialty or sub-specialty
 - ▶ **COP form is very beneficial**
 - ▶ For injuries on or after July 1, 2012, 6 months treatment or surgery = claimant's COP

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Utilization Review - Adverse determinations

45

- Denial of payment or pre-cert needs prior evaluation & opinion by a physician:
 - Currently licensed in Mississippi
 - Within same specialty or sub-specialty
- Adverse determination must be provided within 2 business days by phone/fax/email
 - Followed up in writing within 1 business day
 - Including principal reason/clinical rationale for decision
 - MWCC Fee Schedule section
 - Instructions for initiating appeal

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Utilization Review - Employer's medical exam

46

- Unwritten Rule –
 - UR effective in non-controverted claims with providers;
 - ALJ's flat out don't care - EME only
- However, a legitimate opinion contesting treatment is a good faith basis to deny treatment

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Utilization Review - Employer's medical exam

47

- E/C may elect to have an EME in lieu of UR
 - IW and provider must be notified of election within 2 business days
 - Unreasonable delay may result in penalties and/or attorney's fees or expenses and/or waiver of right to an EME

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EX PARTE COMMUNICATIONS WITH MEDICAL PROVIDERS

48

- "Ex Parte" means "done for, on behalf of, or on the application of one party only"
 - Ex parte communications are prohibited once a Petition to Controvert or equivalent has been filed
 - Evidence obtained from unauthorized ex parte contacts is inadmissible

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DEATH BENEFITS

- ▶ Statute describes who is eligible and amounts.
 - ▶ Includes widow's allowance \$1000 & funeral expense reimbursement \$5000
 - ▶ Widow = 35% of AWW subject to cap
 - ▶ Children = + 10% of AWW; 15% if widow marries out; 25% each child without depending widow
 - ▶ Grandchildren or brothers/sisters
- ▶ Dependency statute

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OTHER BENEFITS AND CREDITS

- ▶ Cannot sue for overpayment
- ▶ Can get credit for future liability for overpayment or mistake
- ▶ Credit may be available for pension, salary continuation, etc., if employee does not contribute
- ▶ Statute requires reimbursement to health insurance carrier after notice
- ▶ No credit for unemployment

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Penalties

51

- ▶ Miss. Code Ann. § 71-3-37
 - ▶ Penalty of ten percent (10%)
 - ▶ compensation payable without an award
 - ▶ not paid within fourteen (14) days after it becomes due
 - ▶ Unless employer controverts right to compensation & files B-52 within 14 days
 - ▶ Penalty of twenty percent (20%)
 - ▶ compensation payable from an award
 - ▶ not paid within fourteen (14) days after it becomes due

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Penalties

52

- Requires finding by MWCC or ALJ that Payer “unreasonably delayed claim without reasonable grounds” within the meaning of § 71-3-59;
- § 71-3-59(2):
 - Commission/ALJ can order the party who delayed or the attorney advising such party, or both, to pay the reasonable expenses, including attorney’s fees, caused by delay;
 - Commission/ALJ may levy a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) against such party, or attorney advising or assisting such party, or both, payable to the commission, paid into the Administrative Expense Fund

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DEFENSES AND WAYS TO REDUCE LIABILITY

53

JURISDICTION

- Concurrent Jurisdiction
 - ▶ Between two states or between a state and the federal government
- Maritime claims excluded
- Less than 5 employees
- Owner exemptions



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APPORTIONMENT

55

- ▶ Applies only to permanent disability benefits
- ▶ Employer/Carrier must establish:
 1. A pre-existing physical handicap, disease or lesion
 2. Shown by conclusive medical findings
 3. Condition is material contributing factor to the disability following the injury
- ▶ Compensation can be reduced by proportion which pre-existing condition contributes to the disability following injury

55

STATUTE OF LIMITATIONS

56

- ▶ General Statute of Limitations: within 2 years of the date of injury or death
 - ▶ Applies to "medical only" cases.
- ▶ 1 year Statute of Limitations requires proper filing of Form B-31
- ▶ A 30-day reporting law applies only if prejudice is proven
- ▶ Claims can be reopened in certain situations



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STATUTE OF LIMITATIONS

57

- ▶ Exceptions to Defense of SOL
 - ▶ Wages in Lieu of compensation
 - ▶ Latent injury SOL starts date claimant knew/should know she incurred a compensable injury
 - ▶ Equitable tolling for intentional misrepresentation of coverage
 - ▶ Statute of Limitations may be tolled and not enforced:
 - ▶ If Employer fails to properly file first report (B-3) along with other misrepresentation

57

INDEPENDENT CONTRACTOR

58

- ▶ Generally independent contractors not a covered employees
- ▶ Except employee of uninsured subcontractor becomes “statutory employee” of general contractor
- ▶ “Dual Employment” or the “loaned servant” doctrine may apply where a person is employed by more than one employer

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INTERVENING CAUSE

- ▶ Every natural consequence that flows as a direct and natural result of the injury also “arises out of the injury and is compensable”
- ▶ If an independent, intervening agency interrupts the chain at any point, then liability of employer and carrier ceases
- ▶ “Quasi-course of employment” standard
 - ▶ Necessary or reasonable activities that would not have been undertaken but for the compensable injury

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FRAUDULENT INDUCEMENT

- ▶ False representation
- ▶ Employer must have “relied” upon the false representation; substantial factor in the hiring
- ▶ Causal connection between the false representation and the injury

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DEVIATION

61

- ▶ Injury in or around work activity not compensable if employee engages in purely personal conduct
- ▶ “In the course of” test
 - ▶ Actuated at least in part by a duty to serve the employer
 - ▶ Reasonably incidental to the employment

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GOING AND COMING CASES

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- ▶ Generally, hazards encountered by employees while going to or coming from their regular place of work are not incidental to their employment and are not compensable



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GOING AND COMING CASES

63

- ▶ Many exceptions to rule, to name a few:
 - ▶ Traveling Employees v. Situs Employees
 - ▶ Employer furnishes transportation (vehicle or reimbursement)
 - ▶ Injury results in parking place in close proximity to employer's premises
 - ▶ Personal Comfort activities
 - ▶ Hazard on single route to work

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THIRD PARTY CLAIMS

64

- ▶ Employee or dependents can file suit against any other party responsible for employee's injury or death
- ▶ Employer/Carrier can be reimbursed from the proceeds of the suit for the compensation and medical payments
- ▶ Made whole doctrine does not apply
- ▶ Medicare/Medicaid liens have priority

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INTOXICATION, ILLEGAL DRUGS & IMPROPER PRESCRIPTION Rx

65

- ▶ If an employee has a or claims a work injury and has a:
 - ▶ Positive drug test for an illegal drug, or
 - ▶ Positive drug test for a legal drug but its use is contrary to the prescriber's instructions or label warnings, or
 - ▶ .08% or more Blood Alcohol Content (BAC), or
 - ▶ Refusal of a blood test,
- ▶ The proximate cause of injury is presumed to be the illegal use of drugs, the high BAC or because the employee refused the test and the claim is denied.
- ▶ The employee may rebut the presumption.

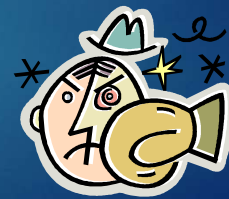


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WILLFUL INTENT TO INJURE

66

- ▶ Claimant intentionally injures himself or others
- ▶ Co-employee (including an employer or superior) either intentionally or accidentally injures the claimant for non-work-related reason
- ▶ Third party intentionally injures employee
 - ▶ must be "because of" employment
- ▶ "Zone of special danger doctrine"
- ▶ "Imported danger doctrine"



66

ACTS OF GOD

- ▶ Employer/Carrier not responsible for an accident which results directly from an Act of God because the injury is not causally related to the employment



67

AVERAGE WEEKLY WAGE

- ▶ Recommended that an accurate average weekly wage always be calculated
- ▶ Calculated based upon the earnings in the 52 wk period immediately prior to the DOI
 - ▶ If not employed for 52 consecutive weeks then earnings are divided by number of weeks worked, provided result is "just and fair to both parties"
 - ▶ If impractical, average weekly wage is that earned by similar situated employee

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E.M.E./I.M.E.

69

- ▶ For the purpose of evaluating temporary or permanent disability or medical treatment
- ▶ More accurately termed an “Employer’s Medical Examination”
IME is appointed by the ALJ
- ▶ Opinion of EME doctor can be accepted over that of the employee’s treating physician



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VOCATIONAL REHABILITATION

70

- ▶ Used to assist in the evaluation of a claim for a non-scheduled injury
- ▶ There is no express authority under the Act to require a claimant to be interviewed or meet with a vocational rehabilitation expert

70

SURVEILLANCE

71

- ▶ Can be used to determine whether or not the claimant is accurately relating physical limitations
- ▶ May also be presented to the claimant's attorney as a settlement tool and at the hearing held before the ALJ



71

SECOND INJURY FUND

72

- ▶ Fund pays for the permanent disability benefits exceeding the amount for which the employer or carrier is liable for the loss of use of a second scheduled member

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SETTLING CLAIMS

Adjudication through the Commission level, and, if necessary, the courts

The “lump sum” or “13(j)” settlement which disposes only of liability for indemnity benefits (Rarely used)

The “compromise” or “9(i)” settlement is generally preferred and can eliminate all liability under the Act, including liability for medical benefits, past, present and future

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SETTLING CLAIMS

- ▶ MWCC Requires for Approval
 - ▶ Settlement Summary
 - ▶ Expects to see “Final Medical” with Impairment and Restrictions
 - ▶ Expects to see Future Medical Cost Projection for Medicare Considerations
 - ▶ B-18's filed

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CLOSING THE CASE

- ◉ Notice of Final Payment (Form B-31)
- ◉ Establishes a 1 year statute of limitation in which to file subsequent application for benefits
- ◉ The 1 year period commences on the date the employee receives notice that the unsigned Form B-31 was filed with the Commission

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CLOSING THE CASE

- ▶ One year time limit begins when:
 - ▶ B-31 form signed by the Claimant; or,
 - ▶ Claimant receives a copy of the unsigned, filed B-31 after notice procedure is completed
 - ▶ Send cover letter and file B-31 with MWCC

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CLOSING THE CASE

- ▶ Additional Medical Treatment
 - ▶ If claimant receives additional medical treatment within one year, another B-31 must be filed to trigger the statute of limitations

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Bad Faith

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BAD FAITH CLAIMS

79

- Bad Faith claims are exception to the Workers' Compensation Exclusivity Rule
- BF claims may be filed against employers, carriers and/or any third-party administrators based upon a willful denial of a claim without reasonable grounds
- Look out! Adjusters have been sued too

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ELEMENTS OF BAD FAITH

80

- Contract of Workers' Compensation Insurance
- Denial of a claim without a legitimate and arguable reason
- Denial was willful and intentional or maliciously wrong

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BAD FAITH CLAIMS

81

- Examples of Bad Faith:
 - Terminating benefits only because claimant reached MMI or failed to attend doctor's appointment
 - Failure to make adequate initial investigation or failure to continue to investigate during pendency of the claim

81

BAD FAITH CLAIMS

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- More Examples of Bad Faith:
 - Withholding benefits to force a settlement
 - Failing to pay impairment rating awarded by treating physician at MMI
 - Delaying investigation after learning of errors reported by claimant

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BAD FAITH CLAIMS

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- Suggestions to Avoid Bad Faith:
 - Encourage prompt reporting of claims
 - Thoroughly and promptly investigating each claim
 - File Form B-52 if investigation is not complete in 14 Days
 - Document arguable & legitimate reasons for every denial
 - Assume claims file will be discoverable in litigation
 - Avoid ex-parte communications
 - When in doubt, get advice from counsel