

# Trust Intelligence

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## How Does Your Workers' Compensation Loss Experience Compare to Similar Agencies?

“How do our losses compare to other organizations?” is a question often asked of us by our members. In response to this question, each year, the Trust does a benchmarking study which compares the DART rates of our members to other similar organizations. The DART rate is the number of illnesses and injuries in an organization resulting in days away from work, restricted activities or job transfer.

$$\text{DART RATE} = \frac{\text{Total number of injuries and illnesses}}{\text{Total number of hours worked by employees}} \times 200,000 \text{ hrs}$$

Members are classified into one of four groups using the National American Industry Classification System (NAICS):

1. Ambulatory Health Care Services
2. Nursing and Residential Services
3. Social Assistance Organizations
4. Hospitals

In early February, we sent letters and recording forms out to our members requesting data from their OSHA 300 log. This information is kept confidential and no

individual member's name will be revealed on the study results. Once we get this data back from our members, we create a comparison of DART, Incidence, and Severity Rates within each of the categories. Each member who participates receives their own results with comparison to the average national rates in each category. Members also receives a comparison chart of where they stand in comparison to other Trust members with similar operations. This information is a valuable benchmarking tool as it compares “like” organizations using payroll as the denominator in the rate calculation. Organizations with fewer employees can compare themselves to larger organizations as an “apples to apples” comparison.

This information can be used for organizations to set frequency reduction goals, identify whether or not their organization may be targeted for an OSHA inspection, or to monitor progress from year to year with safety goals and initiatives.

We urge you, as members of the Trust, to take advantage of this opportunity to see where you stand in comparison to other similar agencies. If you have any questions, please contact Carol Fronczek, Vice President, Loss Control Services at 203-678-0161 or [fronczek@wctrust.com](mailto:fronczek@wctrust.com).



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# Trust Right On Track with Section 111 (MMSEA) Mandatory Reporting

In 2007, Congress imposed new mandatory reporting requirements on group health plans, liability, no-fault, and workers' compensation insurance programs, pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). The reporting requirements apply to all insurance companies and to self-insured employers and groups.

The reporting program is administered by the Centers for Medicare & Medicaid Services (CMS) and requires that applicable Responsible Reporting Entities (RRE's) like the Trust report over 160 data points regarding all claimants who are Medicare Beneficiaries, in order to enable CMS to make an appropriate determination concerning coordination of benefits, including any applicable recovery. In plain English, it means CMS is now mandating the

insurance industry to self report to ensure that they don't pay for medical treatment that is the responsibility of an insurer. To put some teeth behind the law, Congress imposed a penalty up to a \$1,000 per day, per claim for failing to report to CMS during the required timeframe.

Over the past year and a half, Rose Zimmitti, Claims System Administrator, Kathi Bepko, Claims Manager, and others from the Trust worked diligently to comply with all reporting aspects of this federally mandated reporting program. In January, the Trust began to successfully report the requested data to CMS in accordance with the prescribed schedule set forth by CMS for the Trust and all its self insured clients. Thanks to Rose & Kathi.

## New Connecticut Insurance Department Commissioner

On February 4th, Governor Dannel P. Malloy announced his choice of Thomas B. Leonardi, as the new commissioner of the Connecticut Insurance Department. Leonardi was previously the Chairman and CEO of Northington Partners, Inc, an insurance specialty venture capital and investment banking firm in Avon, Connecticut.

Malloy stated that it is important to have someone in this position who can strike the appropriate balance between consumer protection and business development and thinks Mr. Leonardi can balance the responsibilities of protecting consumers and fostering growth in the insurance industry.

Leonardi commented on the insurance industry being an economic force in our state with more than 65,000 people working in the industry in Connecticut, that number down 25% over the past 20 years, and that we need to reverse this decline and bring new insurance jobs to Connecticut. He stated that Connecticut's families need affordable and reliable insurance coverage and they need good jobs. Leonardi's goal as Insurance Commissioner will be to do everything within his power to make sure they get both.

### WELCOME NEW MEMBERS

**AIDS Project of Greater Danbury**

**BURS Receivership**

**Communicare**

**The Connection Fund**

**Council of Churches of Greater Bridgeport**

**Home Instead Senior Care**

**Maria Cerino LLC dba Seniors Helping Seniors**

**Primary Prevention Home Care**

### WELCOME BACK RETURNING MEMBERS

**Abbott Terrace Health Center**

**Brian House & Adult Vocational Programs**

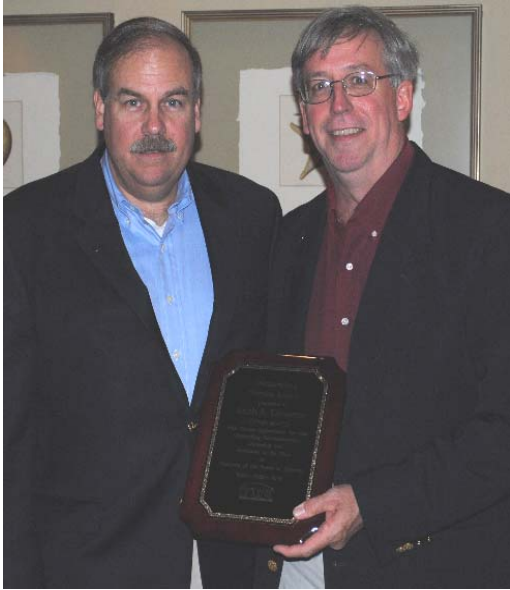
**Community Companions & Homemaking Services**

**Community Child Guidance Clinic**

**Marrakech**



# New Officers Named for the Trust Board of Directors



In November, the Board of Directors elected new officers.

Newly elected Chairman, Joseph M. Milke is the Executive Vice President and Chief Operating Officer of Klingberg Family Centers in New Britain, CT. Joe replaces Keith Lavalette, Executive Director of New Seasons, Inc. of Manchester who completed his 3 year term and currently remains an active member of the board.

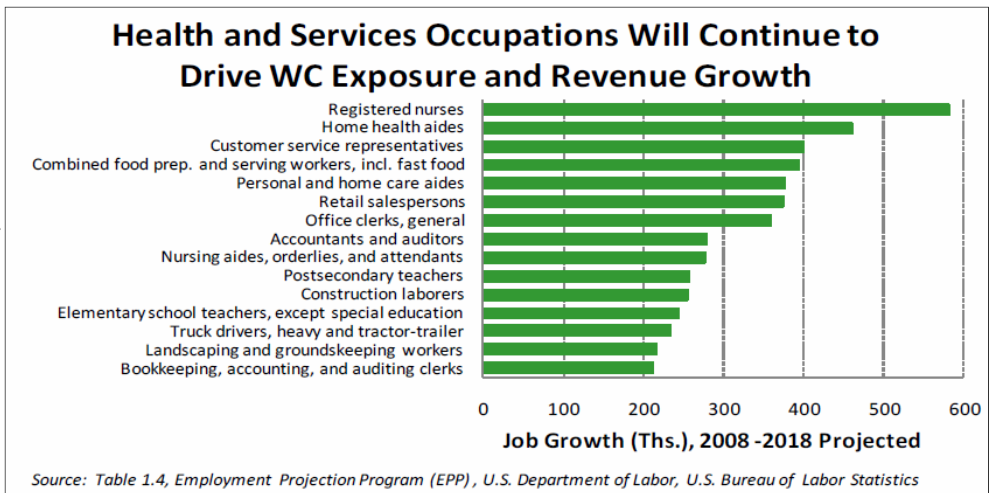
Robert Stephens is the new Vice Chairman. Rob is the Executive Director of Kuhn Employment Opportunities in Meriden.

David Tompkins will continue to act as Treasurer to the board for a second three year term. Dave recently joined the staff of Klingberg Family Centers after several years with the Children’s Home of Cromwell.

Pictured, Joe Milke (left) presents Keith Lavalette with a plaque in appreciation for his dedication and commitment to the Trust.

## Health and Service Industries Projected to Lead in Growth

The U.S. Department of Labor, Bureau of Labor Statistics recently published their economic outlook and its impact on workers’ compensation. They reported that in the 2008-2018 decade, the largest growing population of workers is projected to be in registered nurses. And just behind nursing is home health aides, with a combined total of over 1,000,000 expected new jobs over the next 17 years.



## Member Uses Dividend Distribution for Safety Supplies

In our December newsletter we asked “What do you do with your dividend distribution?” Seabird Enterprises, a community organization in Groton that provides vocational services to both physically and developmentally disabled individuals, uses the dividend to purchase safety supplies and materials for their clients. They purchased CPR kits that come in tiny backpacks which can be clipped to a purse, belt or book bag and a variety of other safety items to help ensure efficient and proper care of their clients in the case of an emergency. Way to go, Seabird!

If you’d like us to share how you spend your dividend distribution, please send an email to Jennifer Garnett at [ceoadmin@wctrust.com](mailto:ceoadmin@wctrust.com). We’d love to put your idea in our newsletter.

# Pharmacy Benefit Manager Initiates Outreach Program to Enhance Patient Safety

Back in September of 2010, the Trust partnered with myMatrixx as our new Pharmacy Benefit Manager (PBM) to assist injured workers in obtaining their workers' compensation prescriptions. Pharmacy expense in workers' compensation claims continues to rise and is becoming an ever increasing concern as more and more injured workers are being prescribed narcotics on a long term basis.

The Trust, in partnership with myMatrixx, has developed an outreach program called **ARM – Alert, Review and Manage**, that notifies the assigned claims adjuster and treating medical provider to advise them when a possible pharmacy concern has arisen with the injured worker's drug therapy program.

Here is how the program works: As the injured worker processes their prescriptions through the myMatrixx system, the type, duration and quantity of drugs are monitored and benchmarked against national clinical protocols. If for any reason the drug class or series of drugs prescribed and the duration of use is outside the norm of nationally recognized clinical protocols, an alert is automatically sent to a clinical pharmacist at myMatrixx and the drug history is reviewed.



If the review warrants additional action, the claims adjuster is notified electronically with a warning flag and the prescribing medical provider is sent a letter outlining the concerns. If no response is received by the provider, a phone call from a clinical pharmacist at myMatrixx is initiated to discuss the concerns and to determine if a change in the injured worker's drug therapy is necessary.

This is just another example of how the Trust is working to enhance our pharmacy patient safety program and ensure that injured workers are getting quality medical care.

## Special Investigations Unit Identifies Fraudulent Claimant

Based on a tip from her employer, a 52 year old certified nurse aide with 7 years on the job was found to be working a private duty job while collecting temporary partial benefits from the Trust for an old injury. An investigation was conducted which corroborated the tip. The employee was confronted and the claim was settled for no additional monies and an agreement was made to pay back \$12,500 in restitution to the Trust to avoid prosecution. Nice job team!



### HELP THE TRUST STOP FRAUD!

**If you suspect an employee of committing fraud or misrepresenting facts while collecting workers compensation benefits**

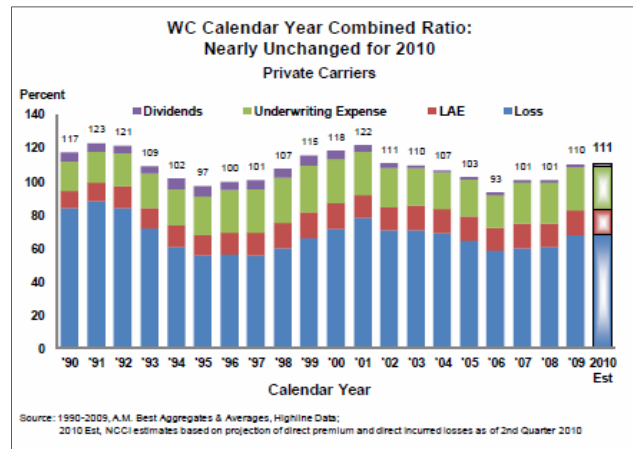
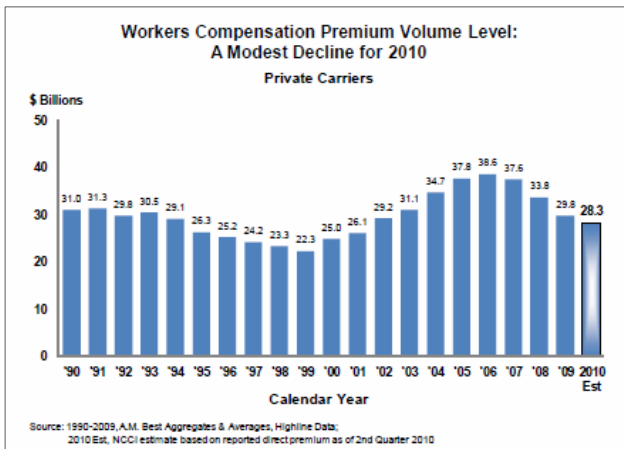
**PLEASE CALL OUR HOTLINE AT  
1-800-559-3739**

Caller does **NOT** need to leave their name.  
All information is handled in the strictest of confidence.

# National Workers' Compensation Results Show Continued Decline in Premium Volume

In January the National Council on Compensation Insurance (NCCI) released its financial update for the workers' compensation industry and the preliminary estimates for the 2010 year were not encouraging. Total premium volume for the industry has declined for a fourth consecutive year to an estimated \$28.3 billion which is a 27% drop from the high of \$38.6 billion in 2005. This rapidly decreasing premium volume doesn't come as a surprise since workers' compensation premium is based on payroll which has been driven down substantially by economic conditions.

Perhaps more disturbing to industry analysts, is the continuing rise in the **combined ratio** which is projected to reach 111% for 2010. This is a rise of 18 points from the low of 93% in 2005. In short, premiums have fallen while losses have risen at significant levels over the past four years. While claim frequency has decreased somewhat over this same period, the drop has been much more than offset by increases in claim severity (cost per claim). The Connecticut Insurance Department recognized this trend and approved an overall average rate increase of 5.8% for the voluntary market in 2011, with some classes seeing higher increases and other classes seeing smaller increases, or perhaps even reductions.



## “GET-A-GRIP” Posters Ready for Distribution



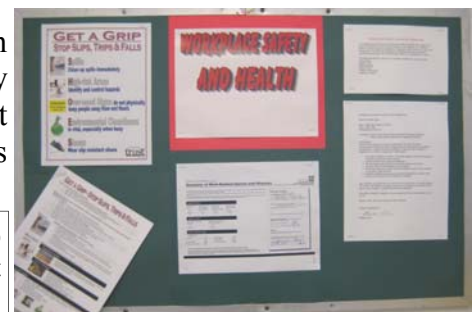
In the Fall of 2010, the Trust launched our GET-A-GRIP campaign to assist our members in reducing workers' compensation injuries associated with Slips/Trips and Falls. These types of injuries account for nearly 16% of employee injuries nationally and 28% of the total incurred losses for the Trust.

The GET-A-GRIP material has been used by many Trust members to increase safety awareness through newsletters, payroll stuffers and postings. Based on member feedback, the Trust has taken the program one step further and has printed 11” by 14” posters which are now available. Please contact your loss control consultant to obtain one for your facility.

The Trust has scheduled an educational session on April 14, 2011 titled “Eliminating Costly Employee Slips, Trips and Falls.” Please contact

us at 203-678-0123 or go to [www.wctrust.com](http://www.wctrust.com) to register for this educational session.

Seacrest Retirement Center has already put the GET-A-GRIP Poster up on their Safety & Health bulletin board to remind employees about Slip, Trip and Fall hazards. Thanks Seacrest!



# Lumbar Spine Fusions:

## Trends and Outcomes

In a recent review of U.S. Medicare claims, it was reported that the rate of complex fusion surgery of the lumbar spine had increased by 15-fold over the period from 2002 to 2007. In the same report, life-threatening complications were shown to rise with increasing degree of surgical invasiveness, from 2.3% among patients undergoing decompressive surgeries (discectomies and/or laminectomies), to 5.6% among patients undergoing complex fusion surgeries. Those undergoing complex fusions were also nearly twice as likely to require re-hospitalization following the procedure, and adjusted mean hospital charges for complex fusion exceeded \$80,000, compared to approximately \$24,000 for decompressive surgeries alone.

The reasons behind markedly increased utilization of complex fusions, particularly given their higher rates of complication and greater expense, remain unclear. A number of factors have been suggested to explain it, including the availability of implantable fusion cages, greater reimbursement for more complex procedures, improved anesthetic techniques and better supportive care, and the conviction among some surgeons that a more definitive procedure will reduce the likelihood of re-operation. However, substantial geographic variation in the frequency of spinal surgeries suggests disagreement on their indications, a conclusion further supported by surveys among spinal surgeons.

If fusions or complex fusions (those involving two or more intervertebral discs) provided a clear therapeutic benefit over less invasive surgery, the rise in utilization despite greater expense and higher complication risk would be more easily understood. However, there is substantial controversy in the medical literature. For spinal stenosis, one randomized trial showed that laminectomy alone was as effective as laminectomy and fusion, while a cohort study suggested an advantage for non-instrumented fusion (fusion without surgical implants). When spinal stenosis and spondylolisthesis (forward displacement of a vertebra on the one beneath it) co-exist there does appear to be a consensus for fusion over decompressive surgery. However, for patients with herniated discs and radiculopathy (impingement on nerve roots), cohort studies have not generally demonstrated an advantage

of fusion over discectomy alone, and for patients with diskogenic pain without nerve root impingement, the results of studies are also mixed. Fusion surgery does not appear to lower the risk of re-operation compared to decompressive surgery alone. Several studies have shown higher re-operation rates among patients who underwent fusions, and rates were even higher among those in whom internal fixation devices were used.

While there are clearly patients for whom spinal fusion has provided benefit, the accumulated experience of the past fifteen years suggests reason for concern. Patients contemplating fusion surgery should understand that higher risks are associated with the procedures, including implantable device failures, complications at the bone graft source site, nerve damage, pulmonary emboli, and infections. In addition, they should understand that despite the increasing frequency with which such procedures are performed, a clear consensus in the medical literature regarding their therapeutic advantages has yet to emerge.



### What do you think?

#### Was the Injury Compensable?

The claimant, a juvenile transportation officer, participated in a basketball game with detainees at a detention center. He knocked the ball out of the hands of one of the detainees and when the detainee verbally responded the claimant initiated a physical confrontation that led to the claimant's injuries. Was the injury compensable? Email your answer to Robert MacDonald at [macdonald@wctrust.com](mailto:macdonald@wctrust.com).

#### Answer to Case from September's Issue

Thanks for the many responses. When a Motion to Preclude is granted it is the result of the employer not contesting liability on a timely basis. The employer is then barred from contesting the employee's right to compensation on any ground. This is the very reason why the Trust emphasizes the importance of forwarding all Notice of Claims and certified mail to our office immediately. The employer could not obtain a Respondent Examination. Furthermore, the Commissioners Examiner reliance on the Respondent Exam was not appropriate and was also excluded from evidence.

# Employment Cases Involving Technology & Privacy Rights

**The Legal Corner**  
Attorney John M. Letizia  
Letizia, Ambrose & Falls, PC  
New Haven, CT

The following cases impact workplace rights and obligations. It is important for employers to familiarize themselves with them. These rulings directly affect not only those involved in each dispute, but may be a sign of things to come for Connecticut employers.



**Facebook** A significant claim this year arose right here in Connecticut. For the first time, the National Labor Relations Board (“NLRB”) accused a healthcare employer of illegally firing an employee after she criticized her supervisor on Facebook. The employee referred to her supervisor as a “17,” a term used to describe psychiatric patients. Her Facebook post elicited supportive responses from co-workers, along with negative comments about the supervisor. The company had a policy prohibiting employees from disparaging company representatives in social networking, but the NLRB asserted that criticisms of bosses on sites like Facebook is protected activity. On February 7, 2011, a settlement was reached between the NLRB, the terminated employee and the company. In the settlement, the company agreed to revise its rules to ensure they do not restrict employees’ rights and agreed not to discipline or discharge employees for discussing wages and other work issues off the job. A separate settlement was reached between the company and the employee, the terms of which are private and unavailable. However, it is probable that the employee either received a financial settlement or is back in her job.

**Employer Impact:** Though a settlement is not binding on other employers, the fact that the company settled is discouraging. However, it is possible that the company was simply unwilling or financially unable to defend such a high profile case. On the other hand, of equal importance is that one of our greater New Haven area employers recently won a similar case before

unemployment compensation when it fired an employee for derogatory statements about the employer and a patient on Facebook. With no set legal rule on disciplining or terminating employees for statements on social networking sites like Facebook, this is an issue that will ultimately have to be resolved by the courts. Until then, employers should be cautious when responding to employee activity on social networking sites and should consider consulting with an employment attorney before taking any action.






**Texting** Another big employment decision in 2010 addressed the ever-evolving issue of text messages. One case involved a California police officer using his City-issued alphanumeric pager for personal purposes, including sexually explicit messaging. After repeatedly exceeding his monthly messaging allowance, the City obtained the pager’s transcripts and disciplined the officer for his behavior. The officer filed a lawsuit alleging the City’s acquisition of the transcript was an unreasonable search in violation of the Fourth Amendment. However, the U.S. Supreme Court disagreed, holding that since the search was limited in scope and motivated by a legitimate, work-related purpose, it was reasonable and did not violate the Fourth Amendment.

**Employer Impact:** Although it did not result in clear guidance, this is the first case where the Supreme Court has attempted to address how individual vs. employer rights are balanced in light of texting/emails. While the City is a public employer, the Court expressly stated that the search would still be regarded as reasonable and appropriate in the private sector. However, to be safe, employers should promulgate and post to all employees a broad, detailed, electronics monitoring policy as is allowed under Connecticut law. Such a policy should cover social networks, emails, and texts on employer-provided cell phones.

*If you have any questions about this topic, would like copies of these cases, would like to discuss how these decisions could impact your workplace, or would like a sample electronics monitoring policy, please call or e-mail Attorney John M. Letizia or Andrew A. Cohen, Atty. at [letizia@laflegal.com](mailto:letizia@laflegal.com) or [cohen@laflegal.com](mailto:cohen@laflegal.com) or at (203)787-7000.*

## Upcoming 2011 Educational Programs

The following seminars are offered by the Trust for the first quarter of 2011. These programs are designed to assist our members in gaining knowledge of issues that surround and support the reduction of work related injuries and associated claims. More detailed information is forthcoming. Many courses offer contact hours (CEUs). Your attendance is encouraged.

<b>HOW TO HIRE THE BEST PEOPLE FOR YOUR ORGANIZATION</b>				
MARCH 17	9:00 AM – 3:00 PM	MEMBERS: \$50	NON-MEMBERS: \$100	
<b>WAGES AND WORKPLACE STANDARDS</b>				
MARCH 31	9:00 AM – 11:00 AM	MEMBERS: FREE	NON-MEMBERS: \$50	
<b>ELIMINATING COSTLY EMPLOYEE SLIPS, TRIPS, AND FALLS</b>				
APRIL 14	9:00 AM – 12:30 PM	MEMBERS: FREE	NON-MEMBERS: \$50	
<b>DEMENTIA CARE SPECIALIST TRAINING™</b>				
APRIL 26	8:30 AM – 5:00 PM	MEMBERS: \$50	NON-MEMBERS: \$100	
<b>AMERICANS WITH DISABILITIES ACT (ADA): WHAT EVERY EMPLOYER NEEDS TO KNOW</b>				
MAY 5	9:00 AM – 12:00 PM	MEMBERS: FREE	NON-MEMBERS: \$50	
<b>FAMILY MEDICAL LEAVE ACT (FMLA): WHAT EVERY EMPLOYER NEEDS TO KNOW</b>				
MAY 10	9:00 AM – 12:00 PM	MEMBERS: FREE	NON-MEMBERS: \$50	
<b>ADA, FMLA &amp; WC: WHAT EVERY EMPLOYER NEEDS TO KNOW</b>				
MAY 19	9:00 AM – 3:00 PM	MEMBERS: FREE	NON-MEMBERS: \$100	



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