

Trust Intelligence

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JUNE is National SAFETY Month

The National Safety Council is on a mission to prevent unintentional injuries and death by educating and influencing people to adhere to and maintain safe and healthy practices in the workplace, on roads and highways, in homes and out in the community.

Unintentional injuries and deaths in the U.S. are at unacceptably high levels. The cost of unintentional injuries to Americans and their employers exceeds \$693 billion nationally, or \$5,900 per household. Unintentional deaths reached an estimated 128,200 in 2009, the highest number on record.

Each year the goal of National Safety Month is to raise public awareness of these statistics and promote safety. As the summer season approaches, efforts are placed on public safety, as this traditionally is a time of increased injuries and fatalities.

To assist in your planning, each week of National Safety Month has a specific theme.

June 5 - 11: Prevent Overexertion

June 12 -18: Promote Safe Teen Driving

June 19 - 25: Prevent Slips, Trips & Falls

June 26 - 30: On the Road - Off the Phone

This year's campaign provides organizations with the information and tools needed to increase awareness of injury prevention every day, everywhere we go. For handouts, printable materials and ideas go to www.nsc.org.

The National Safety Council is aggressively urging businesses of all sizes to set high standards for safety within their organizations that include the safety and well-being of their employees, their employees' families, as well as the communities in which their businesses operate.



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2011 Certified Nurse Assistants (CNA's) Hall of Fame Inductees Honored

The American College of Health Care Administrators, Connecticut Chapter (ACHCA-CT) held its annual meeting on April 7, 2011 at the Aqua Turf in Plantsville, CT. The highlight of the annual meeting was the induction ceremony for the certified nursing assistants (CNA's) selected for induction into the ACHCA-CT CNA Hall of Fame.

Nominees for this prestigious award must have a minimum of 20 years of service as a CNA and an unblemished license history with the State of Connecticut. Candidates are nominated by their facility's supervisors who submit letters of recommendation and supporting information for each candidate.


The induction ceremony was a very touching, heartfelt experience. Testimonials were given by the supervisors of each inductee, reflecting on specific patient care situations that exemplified the exceptional levels of care and compassion engrained in each inductee's professional work ethic. The stories brought tears to the eyes of many in the audience and were a strong testimony that one person can, in fact, make a great and positive difference in the lives of many.

The Trust was proud to be a sponsor of this year's event as six new inductees were presented. Congratulations to this year's winners and "thank you" for your dedicated service to others.

2011 Inductees



Elizabeth Jeney
39 Years
Hughes Health & Rehab
West Hartford, CT



Gussie Montgomery
28 Years
Riverside Health & Rehab
East Hartford, CT

Trust Member



Terra N. Pelletier
30 Years
The Bradley Home
Meriden, CT

Trust Member



Michelle Sullivan Rossi
20 Years
Bickford Health Center
Windsor Locks, CT

Trust Member



Halina Whalen
23 Years
Avon Health Center
Avon, CT



Methlyne Wright
22 Years
Glastonbury Health Care
Center - Glastonbury, CT

Safe Lifting Programs

Effective in Controlling WC Costs and Employee Injuries

In collaboration with researchers at the University of Maryland School of Medicine, the National Council on Compensation Insurance, Inc. (NCCI), recently released results from a study which assessed the implications for workers' compensation costs of *safe lifting programs* in long-term care facilities.

Based on initial findings, the research shifted from whether or not facilities had safe lift programs to the *implementation of the program*. The statistical analysis performed as part of the study showed that an *increased emphasis on safe lift programs at long-term care facilities is associated with fewer workplace injuries and lower workers' compensation costs.*

The study found that the key components of an effective Safe Lift Program are written policies, training, employee input (preferences), overcoming barriers and opposition to the program and the use of

powered mechanical lifts. The vital component is the organization's commitment from top management spread throughout the organization to effectively implement and maintain a safe lift program.

To assist our members, the Trust is holding an educational session on **June 16, 2011** titled **"Safe Patient Movement and Handling: About Face: Changing Manual Handling Orientation to Safe Patient Handling (SPH) Focus"**. CEUs for Skilled Nursing Home Administrators will be provided for the class. The Trust has several other resources available including online SPH training through Trust University, DVDs through our lending library, sample programs, discounts with patient equipment vendors, and onsite consultation. If you have any questions, please contact your Loss Control Consultant or Carol Fronczek, Vice President, Loss Control Services, at 203-678-0161 or Fronczek@wctrust.com.

Post-offer, Pre-employment Testing

On March 17, 2011, the Trust held a new educational seminar titled "How to Hire the Best People For Your Organization". One of our guests speakers was Chanté Drasdis, NHA, MHA, Director, Arbors of Hop Brook, a member of the Trust. Ms. Drasdis shared how a successful implementation of post offer pre-employment testing reduced her recordable injuries in 2011 to ZERO!

Arbors employs approximately 150 staff in continuing care retirement communities, independent living communities, assisted living and nursing facilities.

In 2009 Arbors made a decision to partner with Concentra Medical Centers. Detailed job descriptions were sent to Concentra and appropriate testing/evaluations based on functional requirements of specific jobs were created. Physical activities were paired up with functional capacity testing, including stamina. Scheduling was immediate and results were sent promptly by e-mail.

Ms. Drasdis believes that employers need to become more involved in what the first treatment centers

offer and ensure that testing/evaluation activities are actually aimed appropriately to reduce the risk of work-related injuries and illnesses, determine proper employee placement and prevent excess absences due to illness. Her organization was able to reduce workplace injuries through greater honesty during the interview prior to physical testing/evaluation, and obtaining detailed information about the employee's physical abilities before even starting a job.

Not only are tests offered prior to employment, but Arbors requires that all injured employees must complete a comparative Human Performance Evaluation prior to returning to work. Less time, energy and resources is spent on hiring employees who are unable to perform the essential functions and who are at risk of injury, which has improved the entire hiring process.

Needless to say, several members who attended the seminar have changed their mind about having post offer, pre-employment testing and plan to investigate the process.

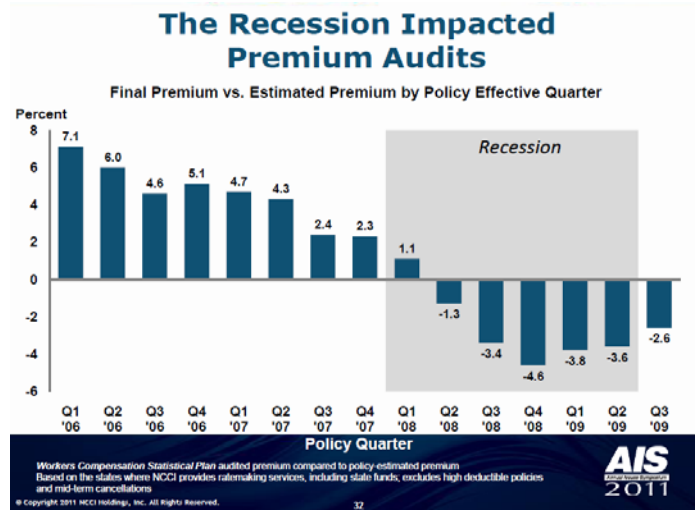
NCCI Annual Issues Symposium Update

On May 4th, Workers Compensation professionals from across the country gathered in Orlando, FL for the 2011 NCCI Annual Issues Symposium as NCCI Chief Actuary Dennis Mealy delivered his State of the Line report. This year's report outlines the continuing difficulties facing the workers compensation industry and includes a 'deteriorating' market forecast.

In 2010 NCCI defined the state of the workers compensation industry as 'precarious' based on uncertainty about where the market was headed. The past year has seen deterioration in the market due to poor underwriting results, declining premiums, and an increase in claim frequency.

Market challenges highlighted included:

- **Deteriorating underwriting results.** With investment yields at historic lows, the current level of underwriting losses is not sustainable. Even with what appears to be a temporary increase in investment gains, the combined ratio will need to decline substantially to provide a reasonable return on capital.
- **Claim Frequency.** Although the impact on the loss ratio from the increase in frequency is moderated by a year of no severity increase, it is unclear whether this frequency increase is a "new normal" or a one- or two-year phenomenon coming on the heels of the "great recession."



- **The political situation in Washington, DC.** With the enactment of the financial reform bill and the establishment of the new Federal Insurance Office, the influence of the federal government over property/casualty insurance issues is likely to increase significantly. In addition, the large federal deficits and the potential for an increase in inflation are definitely a challenge.

- **The healthcare reform bill.** The impact on workers compensation insurance remains uncertain.

On a positive note for Trust members, the Insurance Information Institute named Health Care as the #1 industry poised for growth in the next decade.



What do you think?

Was the Injury Compensable?

The claimant was a police officer who was involved in a gun battle and suffered injuries to his elbow and knee. He also developed post-traumatic stress disorder. However, the treating physician concluded that the physical injuries did not cause the post-traumatic stress disorder. Was the psychiatric injury compensable?

Answer to Case from March Issue

Thanks for the many responses. The injury was deemed not to be compensable. The Commissioner Review Board stated the employee was trained as part of his job in restraint and crisis intervention techniques and was expected to control detainees when their behavior became physically threatening to themselves and others. In this matter the employee knocked the ball out of the hands of a detainee and began to walk away. However, when the detainee said something to the employee, he turned and walked toward the detainee and stood chest to chest. The employee then initiated a physical confrontation. The unauthorized and unnecessary force used by the employee constituted willful and serious misconduct which was outside the scope of his employment.

Workers' Compensation: 100 Year Anniversary

The history of workers' compensation is quite an interesting tale. Believe it or not, we have the 18th century pirates to thank for developing the first known system of wage reimbursement for injured workers. It turns out that pirates were very organized business men who often forged mutually beneficial working relationships with the governors of pre-revolutionary colonies, trading portions of their plundered treasure in exchange for safe harbor for their ships.

Arrgh, this is a dangerous business! Yes, it turns out that one could easily suffer a serious injury at the height of sea battle and many times the injury left the pirate with a reduced work capacity. Needless to say, the loss of a leg or an arm can adversely affect one's performance in hand-to-hand combat! So, the pirates developed a system to compensate injured comrades. One catch, you had to be injured and alive. No payments to the dead or their families. Pirates had a formal compensation program with specific award amounts for specific body parts. For instance, loss of an eye fetched 100 pieces of eight (Spanish dollars), loss of a right arm garnered 600 pieces of eight, loss of the right leg was 500 pieces of eight, and so on. To put things in perspective, the average annual wage in those colonial days was about 100 pieces of eight.

The appearance of a similar program occurred in Germany in the 1880's with the implementation of "Workers' Accident Insurance" to provide some financial protections to the common workman. This program became the first compulsory workers' compensation program enacted in modern, industrialized Europe. England followed suit in 1897.

In the United States it took a few more years of trial and error before the first successful workers' compensation program was born. Several states enacted statutes to implement such a program beginning in 1902 through 1910, but all of the

statutes were struck down by constitutional challenge. Interestingly enough, unions initially fought against these statutes as well, fearing that the successful implementation of the statutes to provide medical care and wage reimbursement would jeopardize the need for unions.

Ironically, and tragically, the New York Court of Appeals declared that state's workers' compensation statute unconstitutional on March 24, 1911 and the very next day a horrific fire occurred at the Triangle Waist Company in New York City, killing 146 employees and injuring scores more. New York did eventually succeed in implementing a workers' compensation program that overcame constitutional challenges in 1913, but it was actually Wisconsin that was the first state to pass a workers' compensation law that was able to survive constitutional challenges in 1911. Thus, 2011 now marks the 100th anniversary of the workers' compensation program in the United States.

Prior to workers' compensation laws, an injured employee had only one path to seek reimbursement of medical bills and lost wages – the courts. This proved very difficult as employees knew that there was an "assumption of risk" when they took the job. In addition, the employee also had to

overcome the "Contributory Negligence" doctrine which held that if the injured employee was even partially responsible in causing his/her injury the employee was barred from receiving any award.

If those weren't enough obstacles, there was also the daunting financial cost for an injured worker to bring suit against a wealthy corporation. Few workers had financial net worth capable of such a battle. The plight of the injured worker was certainly not favorable in those days and eventually legislation was enacted to begin to address the problems, eventually leading to the various state workers' compensation systems that we have today. Arrgh ~ *Happy 100th Anniversary!*



Leave & Light Duty Accommodation Laws

Employers facing a request for leave from an employee must be aware of the multitude of leave laws and light duty work accommodation requirements imposed by Connecticut and federal law. Although everyone is familiar with FMLA leave requirements, many are surprised by others, so this article will focus on those other laws.

FMLA: The federal Family and Medical Leave Act authorizes leaves of absence and related time off for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave, for certain employers and qualifying employees. Unlike the federal FMLA, Connecticut's FMLA requires covered employers to transfer an employee who, upon expiration of FMLA, is unable to perform the original job, if such work is available. Such work can be part-time or at less pay if it suits the employee's physical condition.

The ADA: An employer must reasonably accommodate the employee to the extent that the accommodation does not create an undue hardship to the employer. This may include granting an employee a leave if the employee does not qualify for an FMLA leave, and moving a disabled employee to an available light duty position.

Military Leave Obligations: There are two military leave provisions that cover family members of military service personnel, not to mention the comprehensive leave laws protecting military personnel for up to one year. The Military Caregiver Leave entitles eligible employees who are family members of covered service members to use up to 26 workweeks of leave in a "single 12-month period" to care for a covered service member with a serious illness or injury incurred in the line of active duty. The Qualifying Exigency Leave makes the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying demand" arising out of the military member's active duty, including, among other things, short-notice deployment, military events and related activities, childcare and school activities and "additional activities not encompassed in the other categories, but agreed to by the employer and employee."

Family Violence/Court Proceeding Attendance Leave: This is the newest Connecticut leave law. All Connecticut employers with three (3) or more employees must provide victims of domestic violence with at least twelve (12) days per calendar year of paid or unpaid "family violence leave" to (1) seek medical care or counseling for physical or psychological injury or disability; (2) obtain services from a victim services organization; (3) relocate due to family violence reasons; or (4) participate in any civil or criminal proceeding related to or resulting from family violence.

In addition to the foregoing family violence protections, Connecticut employers must allow the following to attend court proceedings: (1) individuals subpoenaed to appear in a criminal proceeding as a witness; (2) crime victims attending the court proceedings related to the crime against them; (3) immediate family member or guardian of a crime victim when that victim is a minor, physically disabled or incompetent; (4) immediate family member or guardian of a homicide victim; and (5) individuals with restraining or protective orders issued on their behalf. Noncompliant employers face criminal penalties and civil liability.

Pregnancy Leave: It is illegal for a Connecticut employer to deny an employee a reasonable leave of absence or transfer to a suitable temporary position for a pregnancy-related disability. In some cases, the leave could be longer than 9 months if the employee is required to be on bed rest throughout the pregnancy and is still disabled for weeks after giving birth.

The Connecticut Workers' Compensation Act: When an employee has suffered a compensable injury that disables him from his regular job, the employer must transfer the injured employee to the full time work suitable to the employee's physical condition, where such work is available, as long as the employee is still receiving medical treatment or rehabilitation on the advice of a physician or therapist, or is below the maximum level of rehabilitation, whichever period is longer. If an employer fails to provide available light-duty work to the employee, the employer may be ordered to do so by the Connecticut Workers' Compensation Commissioner and faces a civil penalty. Surprisingly, the Connecticut Workers' Compensation Act does not require an employer to grant a leave to the injured employee.

Lumbar Spine Fusions

Continued from March Newsletter

Paid Sick Leave: At the time this article was written, the Connecticut Legislature was considering legislation that would require Connecticut employers with 50 or more employees to provide paid sick leave to their full and part-time employees to deal with their own or a child, parent or spouse's illness, domestic violence issues or a sexual assault. As of May 11, 2011, the proposed bill, SB.913 which is the first of its kind in the country, was passed by the Senate. However, it has not yet been passed by the Connecticut Legislature, although it is expected to be approved and signed into law by Governor Malloy.

Employers faced with a request for a leave or a light-duty work accommodation must be aware of the leave or light-duty work laws or policies that apply to the employee, whether the employee has met the eligibility requirements for the leave or accommodation and whether the employee has met any applicable notice or medical certification requirements. Finally, combining all applicable laws, the employer must provide the employee with the most generous leave entitlement, and assess the employee's reinstatement rights and the employer's obligations to the employee after reinstatement.

The representations in this article are the analysis of the law offices of Letizia, Ambrose & Falls, P.C., who are responsible for its content. This information and analysis are provided gratuitously and for information purposes only. You are encouraged to consult with the appropriate legal counsel prior to relying on this information or analysis.

In the last newsletter I discussed outcomes from spinal fusion surgery based on a recent review of U.S. Medicare claims. Since then, an article published in the journal Spine has highlighted similarly disappointing results, based on a Workers' Compensation database in Ohio.

The authors compared 725 lumbar fusion cases with 725 controls. At 2 years, only 26% of individuals who underwent fusion surgery had returned to work, compared to 67% of those not treated surgically. Of those undergoing fusion surgery, 36% suffered surgical complications and 27% required additional surgery. The rates of permanent disability were 11% among those who underwent fusions and 2% among those who did not undergo surgery. Over the course of the study, 17 surgical patients died, compared to 11 controls.

While the baseline characteristics of surgical and non-surgical patients were examined, including diagnosis, weekly wages, legal representation, total days off, magnetic resonance imaging (MRI) findings, number of vocational and rehabilitation sessions, body mass index (BMI), daily opioid dose and discogram performance--and no statistically important interactions were found--it is still not possible to guarantee that the fusion and control populations were equivalent with respect to severity of lumbar disc disease. That said, even absent comparison with a non-surgical group, the outcomes among those undergoing fusion were alarming.

On a practical clinical level, the study suggests that patients contemplating lumbar fusion surgery need to be educated regarding the frequency of sub-optimal outcomes associated with the procedure. It also highlights the need for reasonable alternatives to fusion surgery to be offered and utilized, and for fusions to be targeted only to those individuals where the benefit of the procedure is clear. To that end, we are examining how we can best work in cooperation with our network physicians and other healthcare providers to assure that injured employees receive the care most likely to allow them to remain healthy and productive.

WELCOME NEW MEMBERS

JFS Care at Home LLC

Eastern CT Cardiology Associates, LLC

Helping Hearts Home Care LLC

Affinity Care Hospice LLC

Handz-On Inc.

WELCOME BACK TO OUR RETURNING MEMBER

**Child & Family Agency of
Southeastern Connecticut, Inc.**

Upcoming 2011 Educational Programs

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 now offer contact hours (CEUs) for Nursing Home Administrators.* Your attendance is encouraged.

SAFE PATIENT MOVEMENT AND HANDLING: ABOUT FACE; CHANGING MANUAL HANDLING ORIENTATION TO A SAFE PATIENT HANDLING FOCUS			
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JUNE 16	9:00 AM – 3:30 PM	MEMBERS: FREE	NON-MEMBERS: \$100
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NEW

BEST PRACTICES IN ESTABLISHING AN EFFECTIVE RETURN-TO-WORK PROGRAM			
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JUNE 30	9:00 AM – 12:00 PM	MEMBERS: FREE	NON-MEMBERS: \$100
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NATIONAL SAFETY COUNCIL DEFENSIVE DRIVING 4-HOUR COURSE			
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JULY 12	9:00 AM – 1:00 PM	MEMBERS: \$50	NON-MEMBERS: \$75
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MEMBERS' ORIENTATION TO THE TRUST			
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JULY 28	9:00 AM – 11:00 AM	MEMBERS: FREE	
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UNDERSTANDING CULTURAL DIFFERENCES IN RESIDENTIAL AND HOME-BASED HEALTH CARE			
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AUGUST 11	9:00 AM – 11:30 AM	MEMBERS: FREE	NON-MEMBERS: \$50
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NEW

PERFORMANCE MANAGEMENT, DISCIPLINE AND LEGAL ISSUES			
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AUGUST 25	9:00 AM – 4:00 PM	MEMBERS: \$75	NON-MEMBERS: \$125
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NEW

NATIONAL SAFETY COUNCIL DEFENSIVE DRIVING 4-HOUR COURSE			
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SEPTEMBER 1	9:00 AM – 1:00 PM	MEMBERS: \$50	NON-MEMBERS: \$75
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The Intelligent Insurance Solution

866 North Main Street Extension
Wallingford, CT 06492