

# Trust Intelligence

Newsletter by the Workers' Compensation Trust

Issue 86

December 2015



## Board Declares \$1.7M Premium Return Happy Holidays to our Members!

We love playing Santa during the holiday season and this year we're delivering a really big present! As you know, the Trust is not your typical insurance provider and it gives us great joy to return hard earned money back to our members, especially in these difficult financial times. So, in keeping with the holiday spirit, the Trust Board of Directors has decided to once again make it a joyous holiday by declaring a \$1.7 million premium return to qualifying members for the 2015 year.

*This latest distribution creates a total of \$6.1 million returned to Trust members in the last six years alone and an astounding \$26 million returned to members over our 34 year history! Think about that for a moment... \$26 million dollars returned back to CT's healthcare/human service providers to reinvest in their businesses and provide much needed services to the public.*

That's what the Trust's mission is all about and together with our members, great things are being accomplished! The Trust was originally founded to provide Connecticut's healthcare employers with a stable, cost effective workers' compensation market. Over the years, the Trust's competitive pricing, superior claims handling, loss control and valuable educational services have all played a role in making the Trust Connecticut's leading provider of workers' compensation insurance to the healthcare/human services market.

The premium return program rewards currently active members based on a combination of each individual member's longevity with the Trust, loss ratio and proportionate share of premium. Each qualifying member will receive their check in the 30 day period preceding the renewal date of their policy in 2016.

### Trust Maintains Rank as 5th Largest Workers' Comp Carrier in CT

Recently released statistical data from NCCI (National Council of Compensation Insurance) revealed that Connecticut's total written workers' compensation premium for 2014 was \$868 million. The Trust finished the 2014 year with \$54 million of that, making this our seventh consecutive year in CT's top five largest providers of workers' compensation coverage.

This is quite an impressive feat considering the Trust limits its services to only the healthcare and human services industries while other carriers market their services to all types of industry ranging from construction to retail.

*All of us at the Trust wish you a most joyous and happy holiday season. Thank you so very much for your continued membership and support and we hope you have a safe and prosperous 2016.*



### Inside This Issue

- |   |  |   |   |
|---|--|---|---|
| 2 | High Cost of Opioids in Workers' Comp  | 4 | Awards of Excellence                        |
| 2 | Rate Relief for 2016                   | 5 | 20 Year Anniversaries                       |
| 2 | Workers' Compensation Case Law         | 5 | OSHA News                                   |
| 3 | RTW Specialist Connecting with Members | 6 | Legal Corner: Overtime Obligations-Homework |
| 3 | News From the Board of Directors       | 7 | Medical Corner: Time for the Flu Vaccine    |
| 4 | Wellness Zone                          | 8 | Education Calendar                          |

# The High Cost of Opioids in Workers' Compensation

Although the workers' compensation industry as a whole has worked very hard over recent years to reduce inappropriate prescribing of opioids (potentially addictive pain killers) to workers' compensation patients, there is far more work to be done. The dollars spent nationally speak to this fact.

## Quick Facts:

- In 2012, the entire United States opioid market for all healthcare conditions (comp and non-comp) was \$8.34 billion dollars.
- Workers' Compensation paid about 17% of that bill; equal to about one out of every six opioid dollars was spent by the workers' compensation industry.
- On average, claim costs when opioids are prescribed increase the overall cost of the claim by a multiple of three. Long term opioid use (greater than 6 months) also reduces the odds of an injured employee ever returning back to gainful employment.

The Trust is committed to controlling inappropriate prescribing of opioids to injured workers through our comprehensive pharmacy benefit program which monitors and flags potential questionable prescribing patterns by providers.



## Rate Relief for 2016

The State of Connecticut Insurance Department has approved the National Council on Compensation Insurance's (NCCI) proposed rate filings for 2016. The rate filing will take effect on January 1. The average overall impact of the filings to the entire market are a decrease in the voluntary loss costs of -3.9% and a decrease in the assigned risk rates of -6.3%. This marks the second consecutive year of proposed decreases and is welcome news as Connecticut is one of the most expensive workers' compensation states in the country.

It should be noted that while the impact on the overall market is a decrease of -3.9%, some industry groups will see larger decreases than others. The healthcare industry falls under the "Goods & Services" industry group which will see an overall average decrease of -3%. Of course, changes to specific class codes within the healthcare industry can vary higher or lower than the -3% average based on the loss experience of each class code.

Also of interest was Connecticut's accident year combined loss ratio results of 100% for 2014. This represents a the fourth year of continuous, steady decline from the high of 135% in 2010. NCCI also noted that Connecticut's unemployment rate remains above the national rate and that while the education and health services sector remains a strong source of job creation nationally at 2.7% growth, Connecticut's growth rate in this sector is lower at 1.7%.

## WC Case Law

**The Scenario:** An RN sustained injuries after a fall on a raised section of sidewalk outside the employer's premises. At the time, the employee was on an unpaid lunchbreak returning to her work station after having gone to the employer's cafeteria to pick up soup for a co-worker who was "busy". After discovering there was no soup in the the cafeteria, the employee went outside to "get some fresh air" where she reportedly fell on the sidewalk. The claimant's supervisor testified that the co-worker she had reportedly left to get soup for, had punched out for the day 48 minutes before the employee punched out for her lunch. The employee testified that her co-worker had continued to work that day after punching out.

**The Ruling:** The trial commissioner found that the claim was not compensable. The employee could not prove that the accident took place within the period of employment, at a place the employee may reasonably have been, and while the employee was reasonably fulfilling her job duties or doing something incidental to it. The commissioner determined the employee was attending to her personal comfort at the time of injury and did not find the employee's testimony, that she was purchasing soup for the co-worker, persuasive.

# RTW Specialist Continues to Make Positive Gains with Members & Injured Workers

With almost a full year under his belt at the Trust, Robb Wright, Return To Work Specialist, continues to work with members, injured workers and providers in shortening the overall disability duration when an employee is sidelined by an injury. Some of the highlights of Robb's efforts to date include the following:

- Involved in over 200 individual claims involving return to work or worksite accommodation changes.
- Made over 30 site visits to Trust members to better understand their work environments and to make suggestions on alternative work duties for injured workers so they could continue to work during their period of recovery.
- Created and presented two half day educational seminars on best practices in return to work programs, in which over 60 Trust members attended.
- Has a documented success rate of over 50% in positively changing the course of return to work for injured workers who were sidelined and not working before Robb became involved in the case.

Should you wish to learn more about how Robb can help your organization with all things related to returning injured workers back to work quickly, please feel free to contact him directly at (203) 678-0185 or [wright@wctrust.com](mailto:wright@wctrust.com).

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## Board Appoints Two New Directors

The Trust is pleased to announce the addition of two new Board members, John R. Quinn & Russell C. Schwartz.

John is President & Chief Executive Officer of VNA Health Systems in New Haven, a longstanding member of the Trust.

Russell is Director of Operations at both Avon Health Care Center and West Hartford Health & Rehabilitation Center, also a longstanding member of the Trust.

Both were appointed to the Board in September to serve three-year terms. We are thrilled to welcome both John & Russell to the Trust Team!



John R. Quinn



Russell C. Schwartz

## Board Members Reconnized for 20 Year Contributions to Trust

Two longstanding board members were recently recognized for their service on the Board of Directors. They have brought a wealth of knowledge and support to the Trust that is unprecedented and greatly appreciated.



Charles F. Shelton, Jr.



Robert "Gus" Boardman

Charles F. Shelton, President of Branford Hills Health Care and Robert (Gus) Boardman, Retired Administrator of Capitol Area Health Consortium are both pictured above with Robert Stephens, Chairman of the board. Both have been serving on the board for 20 years. We value their knowledge and are grateful for everything that they bring to the table. We look forward to continuing these long lasting relationships.



# Free Resources to Help Employees Lead Healthier Lives

Many of our members have expressed interest in putting together low to no cost wellness programs for their employees. There are several resources available on the internet, some specific to Connecticut such as Parks and Trails, and many national sites. Information can be used to educate employees, to build a culture of wellness throughout your organization, for company newsletters or to provide safety committee initiatives.

Some excellent sites to review include:

**Get Healthy CT** <http://gethealthyct.org/>

They identify existing resources and programs using the website as the central connecting point for information on reducing obesity to “make the healthy choice the easy choice.”



**Connectifit** <http://www.connectifit.uconn.edu/>

Focuses on worksite wellness programs and resources that employees can then share with their families and friends putting them on the path to wellness as well. Awareness programs, physical activity programs, environmental programs, and health screening information is at your fingertips.

**US Dept. of Agriculture-Choose My Plate** <http://www.choosemyplate.gov/>

Provides online information on eating on a budget, quizzes, SuperTracker to develop a personalized nutrition and physical activity plan are just some of the resources available on this site.

Providing your employees with information and resources to make healthier lifestyle choices will pay dividends for years to come.

## Award of Excellence Recognizes Exemplary Achievement

The Trust was very pleased to present two Awards of Excellence in 2015 to **ACORD, Inc.** and **Action for Bridgeport Community Development**, both longstanding members of the Trust.



Trust Staff pose with Fran Pangaro, Executive Director at ACORD (center left) at the Acord Annual Employee Gala

Through the strong leadership of Executive Director Fran Pangaro (pictured third from the left with Trust staff), **ACORD, Inc.** implemented several safety programs and initiatives which led to a dramatic reduction in workers' compensation injuries. A strong accident investigation program, an effective and proactive safety committee, 100% accommodation of injured workers and the utilization of several Trust loss control resources, as well as attendance at educational sessions, all contributed to their results.



**Action for Bridgeport Community Development's** management team coordinated a program which focused on accident investigation, slip/trip/fall reduction and a focused effort on the departments/programs producing the highest amount of WC injuries and losses. 100% of injured workers were accommodated in restricted duty jobs, which lowered the cost of the claims. Several Trust resources are being utilized to support their safety efforts including educational sessions and online training through Trust University. Over the past three years, the frequency rates have declined by 25% and severity of injuries by 70%.

Bottom row: Zeljka Trivunovic, Budget Coordinator; Charles B. Tisdale, Executive Director; William Bevacqua, Asst. to Executive Director. Second Row: Rodney Dennis, Comptroller; Linda DaSilva, HR Generalist; Carmen Rodriguez, HR Director; Hector Burgos, Assistant Director, ELD and Diane Ritucci, President & CEO of the Trust.

# Trust Recognizes Longstanding Members

Once again, Diane Ritucci has been out and about visiting members to acknowledge and thank them for their longstanding membership with the Trust. Below she presents members with a plaque of appreciation to commemorate the occasion. It is our pleasure to partner with you all these years!



Suzanne Kuligowski, President & Chief Executive Officer of ARI, Connecticut with Diane Ritucci.



Stephen Christina, President of the Groton Ambulance Association with Diane Ritucci.



Suzanne Legarde, Executive Director of Fair Haven Community Health Center with Diane Ritucci.



Keystone House staff from left to right: Barry McGovern, Associate Executive Director; Ann Brennan, Human Resources Manager; Diane Ritucci, Andrea Grant, Business Officer; and Valerie Williams, Executive Director.



David Hunter, Chief Financial Officer and Owner of Mary Wade Home (left) with Diane Ritucci and David Peters, Insurance Broker of Brown & Brown

## OSHA NEWS

### Employer Safety Incentive and Disincentive Policy & Practices

Many of our members use employee incentive programs as part of an overall risk management program to reduce injuries and illnesses. When put together correctly, incentive programs can be a very effective tool to promote safety. However, when an organization bases an incentive program which focuses on rewarding employees for "going x amount of days without an injury", this may trigger an OSHA inspector to look into the possibility that the program encourages the potential for discrimination against workers who report injuries.

If OSHA does suspect that the program is dissuading injured workers from reporting an injury, then the employer could face citations under the Record Keeping standard, 1904.

OSHA suggests more effective methods to encourage safe work practices which include:

- Incentives that promote worker participation in safety-related activities such as identifying hazards or participating in investigations of injuries
- Positive incentives such as providing tee shirts to workers serving on safety and health committees, offering modest rewards for suggesting ways to strengthen safety and health or throwing a recognition party at the successful completion of company-wide safety and health training.

Positive reinforcement to employees who work safely will go much further in establishing an effective safety culture and reducing worker injuries and illnesses.



# The Legal Corner

Attorney John Letizia, Managing Partner

Letizia, Ambrose & Falls, P.C., New Haven

## Overtime Obligations for Home Companions

Now that the U.S. Supreme Court has denied a stay on the implementation of the new regulations eliminating the minimum wage and overtime exemption for certain employers of home companions, it is important to take immediate action to minimize the impact of significant wage increases that will result for companions who are considered full-time live-in domestic service workers under the regulations. For example, a full time live-in that made \$130 a day or \$910 a week could now make over \$2,000 even if paid at \$9.60 an hour. This is especially a problem for DSS providers who are prohibited from passing any part of this increase on to the consumer. The new regulations also significantly narrow the exemption for home companions employed directly by the individuals or families receiving home care services. Agencies and other employers of caregivers must be aware of the new requirements of the regulations and consider what legal steps may be taken to avoid the significant financial burdens that have already led some agencies to terminate their companion services. However, there are dangers and risks with certain options that may appear on their face to offer a solution, such as creating a registry or utilizing an outside vendor placement agency. In reality, these options involve a significant enforcement risk that must be carefully considered before they are implemented.

### 1. Elimination of Exemption for Certain Employers.

Under the final rule, only individuals or families employing home companions directly are exempt from paying overtime or minimum wage. Other employers, such as home care or companion agencies (the “Agency” or “Agencies”), are no longer exempt from paying minimum wage and overtime to employees who provide companionship services or live-in domestic services, even when the employees are jointly employed by the Agency and the individuals, families or households (hereafter “consumers”) using the services. However, consumers may still claim the applicable exemptions in certain circumstances.

### 2. Risks Associated with Registry and Outside Vendor Placement Agency Models.

There are legal ways you can dramatically reduce the impact of these new minimum wage and overtime requirements for the live-in companions, but utilizing the traditional registry or outside placement agency models could be risky and possibly

in violation of Connecticut’s workers’ compensation, unemployment compensation and wage and hour laws. In our opinion, the Connecticut Department of Labor, especially the unemployment compensation division, and the Connecticut Workers’ Compensation Commission, may conclude that most registry companions are not “independent contractors,” but instead are employees of the consumer or registry, or both. The risk is especially significant in workers’ compensation because the registry and the consumer may be liable for all of the companion’s medical and weekly indemnity benefits (which are a weekly wage-like supplement) for life in the cases of severe injuries. The failure of the consumer or the registry to provide workers’ compensation insurance coverage will mean that the registry, or worse the consumer, is essentially self-insured in violation of Connecticut law. Moreover, the consumer’s homeowner’s insurance will not cover these workers’ compensation benefits, nor will the registry’s commercial or property and casualty insurance.

Some Agencies have tried to avoid their overtime obligation by terminating the employment of their companion employees, and in essence “transferring” the companions to an outside vendor placement agency, where the companions work as independent contractors. In our opinion, for the same reasons noted above, we believe the Connecticut Department of Labor and the Connecticut Workers’ Compensation Commission will likely conclude that the companion is not an independent contractor, but rather is an employee of the Agency, the outside vendor placement agency and/or the consumer in the event of a random audit or an audit resulting from a companion’s unemployment compensation claim, workers’ compensation claim or claim for overtime and unpaid wages.

### 3. Properly Formed Internal Employment Agency Model.

Unlike the vendor outside placement agency model, where the companion is deemed an independent contractor, a properly formed and registered internal employment agency model may provide a cost-saving option for some employers, where the consumers undertake responsibility for employing the companion directly, obtaining workers’ compensation coverage and paying unemployment compensation assessments for their companion employees.

*(see Overtime Obligations next page)*

## Overtime Obligations(continued)

**4. Employers May Agree to Exclude Time.** Employers may also enter into agreements with live-in and daily companion employees to exclude certain time from compensable hours worked, such as sleep time and meal time when the companion is free from work duties. There is also a credit that may be taken for meals and lodging provided to companions in certain circumstances and with prior State approval.

**5. Accurate Records.** Most important, employers must maintain accurate records of hours worked, especially when documenting shortened or missed unpaid breaks.

For more information on the new regulations, or the steps that may be taken to minimize the financial impact of these regulations on your agency especially as to the loss of the overtime exemption for live-ins without the legal risks of a traditional registry or outside placement agency, please contact John Letizia [letizia@laflegal.com](mailto:letizia@laflegal.com); (203) 787-7000.

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## Staying Healthy: Get Your Flu Vaccine

With influenza season just around the corner, it's a good time to review some basic information about the flu vaccine. Because influenza strains vary a little each year, the vaccine formulation must be slightly different each year in order to provide immunity to the strains likely to circulate. At time of writing, there have been already some sporadic influenza outbreaks in the U.S., though we are not yet seeing sustained transmission. The good news so far is that when strains have been typed, they have matched up well with the strains used in this season's vaccine. As you may know, the match last year was not very good, and the influenza vaccine was not as effective last year as it usually is.

How effective is the vaccine usually? Based on a recently published review analyzing vaccine efficacy in recent decades, about 60% of people who receive



influenza vaccination should be fully protected from contracting the disease. While the other 40% of individuals receiving the vaccine may not be *fully* protected, it is likely that the vaccine affords them some protection, possibly enough to prevent them from getting severely ill from influenza.

While some people do not particularly like getting a shot, side effects from getting influenza vaccination are generally mild and short lived. A common side effect is soreness at the site of injection, which generally lasts a few days. Occasionally, vaccine recipients will experience headache, muscle aches or low grade fever for a few days. *It is not possible for the influenza vaccine to cause influenza.* The virus used in flu shots is completely inactivated and not infectious. It is important to remember that many respiratory viruses circulate during the time of the year when flu vaccines are given, that those non-influenza viruses can cause symptoms similar to the flu, and that actual vaccine-induced protection from influenza does not occur until about two weeks following vaccination.

The best way to prevent influenza is to get vaccinated. It not only protects you, it also makes it less likely for you to pass influenza to family members or co-workers. And never underestimate the potential severity of influenza. CDC estimates that between three thousand and forty-nine thousand Americans die each year from the disease; most vulnerable are the very young, the very old, and those with chronic diseases.



# Upcoming Educational Programs

*The following 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. To register, or obtain detailed information, go to [www.wctrust.com](http://www.wctrust.com). Most courses offer Continuing Education Units (CEUs). Your attendance is encouraged.*

## **OSHA Injury & Illness Recordkeeping Standard**

Thursday, January 14	9:00 AM - 11:30 AM or 1:00 PM - 3:30 PM	Members: FREE	Value: \$100
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## **Partnering With The Trust**

Wednesday, January 27	9:00 AM - 12:00 PM	Members: FREE	Value: PRICELESS
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## **National Safety Council 4-Hour Defensive Driving Course**

Thursday, February 11	8:30 AM - 1:00 PM	Members: \$40	Non-Members: \$60
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## **Energizing Your Safety Committee**

Wednesday, February 24	9:00 AM - 12:00 PM or 1:00 PM - 4:00 PM	Members: FREE	Value: \$100
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## **Developing An Employee Handbook**

Thursday, March 3	9:00 AM - 12:00 PM	Members: FREE	Value: \$100
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## **Bloodborne Pathogens: Train the Trainer**

Thursday, March 10	9:00 AM - 12:00 PM	Members: FREE	Value: \$100
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## **OSHA Standards for Healthcare (Part 1 of 4)**

Thursday, March 24	9:00 AM - 11:30 AM or 1:00 PM - 3:30 PM	Members: FREE	Value: \$100
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