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PROACTIVE PLANNING FOR CATASTROPHIC CLAIMS

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# PRESENTERS



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# TYPES OF CATASTROPHIC CLAIMS

- Catastrophic event in the workplace that can involve one or more employees
- Serious injury with potential for medical or indemnity benefits to “go off”
- More recently, COVID-19 claims

# TRENDS IN CATASTROPHIC CLAIMS

- Values/spends in catastrophic claims ballooning
- Rate reductions of last decade turning
- High employment rate means new, untrained employees
- Opioid pandemic has led to more attention being paid by states both on cost and frequency of use
- Mental/Mental injuries

# IMPACT OF CAT CLAIMS ON MEDICAL LOSS RESERVES

- CAT claims account for less than 1 percent of workers' compensation claims, but 20 percent of workers' compensation losses
- Difficult to forecast medical costs decades into the future
- Life expectancy increasing after recent flat period
- Actuaries at carriers playing important role in reserve process
- Life care plans and nurse case managers

# CATASTROPHIC EVENT IN THE WORKPLACE THAT CAN INVOLVE ONE OR MORE EMPLOYEES

- Construction accident
- Unexpected workplace injury “wrong place at the wrong time”
- Workplace violence
- Act of God

# INITIAL RESPONSE

- Contact emergency providers and secure the site
- Notify senior leadership and media relations
- Create contact number for employees and families
- Photos
- Contact your attorney
- Identify a “point person” that can communicate clearly and effectively with the family and serve as a liaison to benefits department

# PROACTIVE APPROACHES IN MANAGING THE CLAIM

- Create emergency response plan
- Provide notices to your entire organization about your plan and welcome discussion
- Have “team leaders” that can organize on-site and implement emergency plan
- Include your attorney and carrier/TPA in your plans and have them review what you propose
- Get the right experts and investigators involved
- Immediately review your subrogation options



# INJURY WITH POTENTIAL FOR MEDICAL OR INDEMNITY BENEFITS TO “GO OFF”

- Claimant with preexisting medical condition that is exacerbated or worsened by work injury
- Malingering claimant that has no intention of returning to work
- Workplace injury that morphs into a psychiatric claim
- Opioid overuse

# PROACTIVE RESPONSES IN MANAGING THE CLAIM

- Identify the claimant and claimant's attorney on the other side, there are often patterns in practice
- Conduct discovery ASAP
- Get your attorneys involved early – they know the parties involved and the jurisdiction
- Know whether treatment guidelines exist in your state and make sure the judicial authority follows them
- **STAY ENGAGED** with the injured party and with the claim

# SPECIAL CONSIDERATIONS

- Settlement
- Franchise issues
- Carrier or Third-Party Administrator Involvement
- Grief counseling
- Benefits information

## SCENARIO ONE

An employee stocking shelves falls off a ladder. This injured worker had preexisting knee issues, and the impact of his fall results in a complete tear of his ACL and MCL. The employee undergoes corrective surgery and is prescribed pain medications.

Twelve months after surgery, the claimant is still on pain medication and has not returned to work.

## SCENARIO TWO

The employee is operating a crane on a bridge on a construction site. Due to potential defaults in the engineering design, the bridge collapses. The injured worker is ejected from the crane and appears to have life threatening injuries.

## SCENARIO THREE

A manufacturing employee is terminated for cause after ignoring safety protocols. The employee is a 25-year veteran of the organization and is replaced by the 19-year-old nephew of the foreman.

The terminated employee returns to the worksite with a gun.

# COVID-19: THE GREAT UNKNOWN

- Nominal versus Catastrophic Exposure
  - Wage loss, Medical, Permanency
- Complex and changing causation analysis that changed State by State
- Multiple claims arising from an outbreak
- Potential 3rd Party Liability based on workplace precautions
- <https://www.alfainternational.com/covid-19>

# COVID-19 – CDC STATS AS OF JUNE 12, 2020

- 2,038,344 Covid-19 cases and 114,625 deaths as of June 13, 2020 per the CDC
- The proportion of visits to outpatient providers and emergency departments (EDs) for illnesses with symptoms consistent with COVID-19 continued to decline or remain stable at low levels as of June 6, 2020.
- The overall cumulative COVID-19 associated hospitalization rate is 89.3 per 100,000, with the highest rates in people 65 years of age and older (273.8 per 100,000) followed by people 50-64 years (136.1 per 100,000).
- Based on death certificate data, the percentage of deaths attributed to pneumonia, influenza or COVID-19 (PIC) decreased from 12.4% during week 22 to 7.3% during week 23. This is the seventh week during which a declining percentage of deaths due to PIC has been recorded; however, the percentage remains above the epidemic threshold.
- New cases are still trending upwards in some States.



# STATES THAT HAVE IMPLEMENTED CHANGES TO THE WC LAW

- 12 States modified the WC law to include provisions to address Covid-19 disease in the workplace and extend coverage
- 24 States made no change to their existing WC law
- 14 States made no change, BUT have legislation pending or the State's WC Agency has issues a policy statement.
- Changes to the laws are specific to Covid-19, temporary in nature, define covered “essential workers” and create a rebuttable presumption.
- California appears to be the model for many States

# CALIFORNIA REBUTTABLE PRESUMPTION EXECUTIVE ORDER

- Employee who:
- Worked at job site during Stay-at-Home order beginning March 19, 2020; and
- Is diagnosed by a physician and confirmed by further testing within 30 days or tested positive for COVID-19 within 14 of performing work at employer job site; and
- Will be presumed to have contracted COVID-19 at work for the purposes of workers' compensation benefits.
- Presumption applies to dates of injury occurring from March 19, 2020 to July 5, 2020 or 60 days following the date of the Executive Order.

# CALIFORNIA REBUTTABLE PRESUMPTION EXECUTIVE ORDER

- The presumption is rebuttable.
- Employer has 30 days to investigate the claim in order to accept or deny.
- Employee is eligible for all workers' compensation benefits including medical treatment, hospitalization, disability indemnity, and death benefits, though permanent disability is still subject to apportionment

## SCENARIO FOUR

An emergency room nurse contracts Covid-19 and is admitted to the hospital for an extended timeframe due to complications.

## SCENARIO FIVE

In early March, 2020 a meat processing plant documents its first Covid-19 case in the workplace. On March 27, 2020 a 70 year old employee leaves work with a severe cough. On April 3, 2020 the employee died from respiratory failure due to Covid-19.

# POP UP QUESTION

- Which state's law modification to its workers' compensation act is serving as the model for many states' responses to the COVID-19 pandemic?
  - A. Arizona
  - B. Ohio
  - C. California
  - D. Georgia

# 3RD PARTY LIABILITY

- Estate of Enoch Benjamin v. JBS, S.A. – Pennsylvania
- WC exposure is limited. No dependents or spouse.
- WC exclusivity is a bar to 3rd party liability absent reckless or intentional conduct.
- Listed as plaintiffs in the suit are several JBS affiliates, including the Brazilian parent company, JBS S.A.; JBS Souderton Inc., of Harrisburg; Pilgrim's Pride Corporation, of Harrisburg; and JBS USA Food Company and JBS USA Holdings Inc., of Greeley Colo.
- Plaintiff will argue Mr. Benjamin was employed by one entity - JBS Souderton- and the other entities that controlled safety at the plant are distinct and therefore not immune.

# 3RD PARTY LIABILITY

- The suit alleged that despite knowing the risks regarding COVID-19, prior to shutting down the plant on March 30, JBS failed to provide sufficient PPE; forced workers to work in close proximity; forced workers to use cramped and crowded work areas, break areas, restrooms and hallways; discouraged workers from taking sick leave in a manner that had sick workers in fear of losing their jobs; and failed to properly provide testing and monitoring for individuals who had or may have been exposed to the virus.
- The lawsuit includes claims of wrongful death, negligence, and fraudulent misrepresentation and is the first of its kind in Pennsylvania and among only a handful in the U.S.
- If the WC exclusivity provisions are breached, this becomes a 3rd party catastrophic claim.



# COVID-19 RESOURCES

- ALFA International Covid-19
  - <https://www.alfainternational.com/covid-19>
- OSHA Covid-19 information page
  - <https://www.osha.gov/SLTC/covid-19/controlprevention.html>
- OSHA – Preparing Workplaces for Covid-19
  - <https://www.osha.gov/Publications/OSHA3990.pdf>

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QUESTIONS, PLEASE CONTACT ONE OF  
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