Speaker

- Client Executive and Professional Services Risk Consultant
- University of Virginia (2002) and Emory University School of Law (2005)
- 9 years in private practice at Sutherland LLP focused on construction law
- 4+ years with Greyling
- Licensed attorney in New York, Georgia, and Florida (Board Certified in Construction Law)
- LEED AP BD+C
- IRMI Construction Risk & Insurance Specialist
- From Atlanta but now residing in Portland, Maine
Agenda

• Overview of Workers’ Compensation Generally
• Explaining the Experience Modification Rating and How EMR is Calculated
• Predicting EMR
• State-by-State Distinctions
• Separate Entities and Applicability of EMR
• Limitations of EMR/Responding to Client Concerns
Why Does Workers’ Compensation Exist?

• Rooted in Industrial Revolution

• Employer defenses to employee injury suits:
  – Contributory negligence
  – “Fellow Servant” rule
  – Assumption of risk

• *The Jungle*, Upton Sinclair (1906)

• First comprehensive state work comp statute: Wisconsin (1911)

• Generally, exclusive remedy against employer
How Does Workers’ Compensation Work?

- Employer pays premium to insurer
  - Rates established by classification
  - Rates filed with state insurance regulators

- Insurer pays unlimited benefits for:
  - Medical costs
  - Lost wages
  - Statutory benefits connected to specific injuries

- U.S. Longshore & Harbor Workers’ Compensation Act
- Jones Act
## Workers' Compensation Classifications

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Mass Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>8601</td>
<td>Code 8601 is applicable to insureds engaged in the architectural or engineering profession as a separate and distinct business. Operations conducted by these firms usually include consultations with clients; research on behalf of clients; site inspections; and the compilation of information to enable these firms to make recommendations to their clients. These recommendations may be in the form of written or electronic media and include plans, maps, charts, and specifications. Code 8601 includes, but is not limited to, the following type of engineering firms: mechanical, civil, electrical, chemical, mining, metallurgical, marine, and industrial.</td>
<td>$0.21</td>
</tr>
<tr>
<td>8810</td>
<td>Code 8810 is applied to clerical office employees provided they are not otherwise classified. The duties of a clerical office employee include creation or maintenance of financial or other employer records, handling correspondence, computer composition, technical drafting, and telephone duties, including sales by phone. The clerical office classification continues to apply to a qualified clerical office employee who performs a duty outside of a qualified clerical office area when that duty does not involve direct supervision or physical labor and is directly related to that employee’s duties in the office. These duties do not exclude depositing funds at the bank, purchasing office supplies, and pickup or delivery of mail, provided they are incidental and directly related to that employee’s duties in the office. However, for purposes of this rule, the definition of clerical duties excludes outside sales or outside representatives; any work exposed to the operative hazards of the business; and any work, such as a stock or tally clerk, which is necessary, incidental or related to any operations of the business other than a clerical office. A clerical office is a work area separated and distinguishable from all other work areas and hazards of the employer by floors, walls, partitions, counters, or other physical barriers.</td>
<td>$0.07</td>
</tr>
</tbody>
</table>
Reading Work Comp Policies

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>CODE</th>
<th>TOTAL ANNUAL REMUNERATION</th>
<th>PER $100 OF REMUNERATION</th>
<th>ESTIMATED ANNUAL PREMIUM</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOCATION 001 01 (CONT'D)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BLANKET WAIVER</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEE ENDT. WC 00 03 13 (00)-001</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WAIVER CALCULATION IS BASED ON CLASS CODE(S) PREMIUM X RATE.</td>
<td>0930</td>
<td>70715</td>
<td>.03</td>
<td>2121</td>
</tr>
<tr>
<td>ARCHITECTURAL OR ENGINEERING FIRM-INCLUDING SALESPERSONS &amp; DRIVERS</td>
<td>8601</td>
<td>9429802</td>
<td>.69</td>
<td>65066</td>
</tr>
<tr>
<td>ARCHITECTURAL OR ENGINEERING FIRM-CLERICAL STAFF</td>
<td>8603</td>
<td>2973411</td>
<td>.19</td>
<td>5549</td>
</tr>
</tbody>
</table>

.80% EMPL. LIAB. INCREASED LIMITS (9807) $ 566
4.20% DEDUCTIBLE CREDIT (9664) 2970
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION 70432
EXPERIENCE MODIFICATION: .75 MODIFIED PREMIUM 52824
15.00% SCHEDULE DEBIT (9839) 7924
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM 60748
4.60% PREMIUM DISCOUNT (9964) 2794
TERRORISM (9740) 2481
CAT (OTHER THAN CERT ACTS OF TERRORISM) 9741 1240
TOTAL ESTIMATED PREMIUM 61675
DEPOSIT AMOUNT DUE 61675
Overview of EMR

• EMR = Experience Modification Rating

• Administered by the National Council on Compensation Insurance (NCCI)

• Compares experience of individual employer with the “average” employer in the same classification

• Promotes health, safety, and return to work by providing an incentive to employers with lower-than-average losses

• Places emphasis on frequency rather than severity
  – State accident limitation caps on individual claims

• Intrastate versus interstate EMR factors
Calculating EMR

- Calculations vary by state filings
- Uses past 3 years of complete data
- Experience Rating Adjustment: limits amount of medical-only claims to 30%
- Severe losses are capped
- Primary losses ($17,000 in most states) are given more weight

<table>
<thead>
<tr>
<th>Loss Amount</th>
<th>State Per Claim Accident Limitation</th>
<th>Primary Loss (Frequency)</th>
<th>Excess Loss (Severity)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500,000</td>
<td>$250,000</td>
<td>$17,000</td>
<td>$233,000</td>
</tr>
<tr>
<td>$100,000</td>
<td>$250,000</td>
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</tr>
<tr>
<td>$5,000</td>
<td>$250,000</td>
<td>$5,000</td>
<td>$0</td>
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</tbody>
</table>
More Detail on EMR Calculations

## WORKERS COMPENSATION EXPERIENCE RATING

<table>
<thead>
<tr>
<th>(A)</th>
<th>(B)</th>
<th>(C) Exp Excess Losses (D - E)</th>
<th>(D) Expected Losses</th>
<th>(E) Exp Prim Losses</th>
<th>(F) Act Exc Losses (H - I)</th>
<th>(G) Ballast</th>
<th>(H) Act Inc Losses</th>
<th>(I) Act Prim Losses</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td></td>
<td>212,580</td>
<td>316,112</td>
<td>103,532</td>
<td>0</td>
<td>69,868</td>
<td>21,852</td>
<td>21,852</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Primary Losses</th>
<th>Stabilizing Value</th>
<th>Ratable Excess</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(I)</td>
<td>(J)</td>
<td></td>
</tr>
<tr>
<td>Expected</td>
<td></td>
<td>(K)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARAP</th>
<th>FLARAP</th>
<th>SARAP</th>
<th>MAARAP</th>
<th>Exp Mod</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00</td>
<td>1.00</td>
<td>1.00</td>
<td></td>
<td>.67</td>
</tr>
</tbody>
</table>

REVISED RATING
NOTICE - THIS IS A PRELIMINARY MODIFICATION
COMPLETE PAYROLL AND LOSS DATA HAVE BEEN APPLIED TO CURRENT RATING VALUES
BUT A FINAL MODIFICATION CANNOT BE PROMULGATED UNTIL PENDING RATE
FILING HAS BEEN APPROVED FOR THE STATES IDENTIFIED WITH AN * ABOVE.
NOTICE - THIS EXPERIENCE MODIFICATION IS CALCULATED TO REFLECT
THE WEIGHTED FORMULA IN COMPLIANCE WITH MAINE LAW H.P. 1397.
RATING REFLECTS A DECREASE OF 70% MEDICAL ONLY PRIMARY AND EXCESS LOSS
DOLLARS WHERE ERA IS APPLIED.
THE ARAP FACTOR SHOWN IS FOR THOSE STATES CONTAINED ON THIS
RATING THAT HAVE APPROVED THE ARAP PROGRAM AND IS CALCULATED
BASED ON THE STATE WITH THE HIGHEST APPROVED MAXIMUM ARAP
SURCHARGE. THE MAXIMUM ARAP SURCHARGE MAY VARY BY STATE.
PLEASE REFER TO EACH STATES APPROVED RULES FOR THE
APPLICABLE MAXIMUM ARAP SURCHARGE.
THE TENNESSEE CODE ANNOTATED SECTION 50-6-501 REQUIRES EVERY PUBLIC OR
PRIVATE EMPLOYER THAT IS SUBJECT TO THE WORKERS COMPENSATION
STATUTE TO "ESTABLISH AND ADMINISTER A SAFETY COMMITTEE IN
ACCORDANCE WITH RULES ADOPTED PURSUANT TO T.C.A. SECTION 50-6-502
IF THE EMPLOYER HAS AN EXPERIENCE MODIFICATION RATE EQUAL
TO OR GREATER THAN 1.2."
REVISED RATING TO INCLUDE UPDATED DATA FOR: NY, POL. #: WC015893709, EFF.: 04/01/2017
Predicting & Mitigating EMR

- Changes in payroll and classifications
- Reporting losses “net of deductible”
  - Alabama, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Missouri, New Mexico, Oklahoma, Oregon

Used to calculate the current EMR


Used to calculate the EMR for next fiscal year

Current EMR

New EMR
Predicting & Managing EMR

- When the audited payroll comes through
- Some point during the year as losses develop
- To anticipate the mod released by NCCI and then to confirm it
Applicability by State

- 39 states use NCCI EMR Plan calculations
- 3 states produce independent intrastate ratings, but NCCI Plan still applies
  - Massachusetts, Indiana, and North Carolina
- 3 states create their own but allow combination with NCCI
  - New York, Minnesota, and Wisconsin
- 5 states do not use NCCI calculations
  - New Jersey, California, Delaware, Michigan, and Pennsylvania
- 4 monopolistic states
  - Washington, Ohio, North Dakota, and Wyoming
Combination of Entities

- Entities with 50% common ownership are combined
- Changes in ownership must be reported within 90 days (Form ERM-14)

<table>
<thead>
<tr>
<th>Company A</th>
<th>Company B</th>
<th>Company C</th>
</tr>
</thead>
<tbody>
<tr>
<td>51%</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>40%</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>Various – 9%</td>
<td>Various – 20%</td>
<td>Various – 20%</td>
</tr>
</tbody>
</table>
Limitations of EMR

• Not a valid predictor of future losses
• Thus, not an indicator of safety or risk management practices
• Does not account for the facts and circumstances of a claim
• State differences in rates and factors
• Subrogation recovery often lags
• Calculations impacted somewhat randomly by timing
• Can be influenced by payroll, classification, and risk decisions
Risk Management

• Employee training and selection, including safety
• Invest in employee well-being and healthcare
• Identify and address common themes in worker injuries
  – Focus on lost time claims
• Actively monitor and manage open claims
• Have a return-to-work or transitional duty program
• Understand and pursue subrogation
1.0 EMRs

- EMR calculations = 1
- Employer is not eligible for EMR
- Employer does not have minimum data requirements
- New business with insufficient data
- Significant ownership change
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