

An Introduction To Workers' Compensation Data

**Thomas M. Finn
Thomas M. Finn LLC
P.O. Box 1483
Dalton, Georgia 30722-1483**

Objective of this article:

It is the objective of the author to provide a simple, easy to understand overview of workers' compensation data reporting and resources which can be used in any State to develop a strategy to challenge the validity of data relied upon by the Property and Casualty Insurance Industry and its allies to initiate and pursue workers compensation legislative and system reform.

Workers' Compensation "Reform" Follows Recession

In the 24 March 2013 online edition of Business Insurance appeared the article, "Rate Increases, Stronger Economy Improve Property/Casualty Insurer Outlook."¹ In the September 2013 Workers' Compensation "The Topic", of the Insurance Information Institute, the following statement is found:²

- **"National:** According to NCCI's State of the Line Analysis, in 2012 workers' compensation premium for private carriers and state funds increased to \$39.63 billion, a 9 percent jump from 2011 Because its premiums are directly linked to employment levels and wages workers' compensation insurance has been the line most significantly affected by the economic slowdown."

Then, a warning:

- "When premiums rise sharply, legislators often call for reforms. . . . Some states are now approaching a crisis once again as new problems arise."³

Historically, as profitability "tanks" following a recession, the "combined ratio" climbs, "hard markets" may emerge, premium costs increase; followed by "reform" movements which sweep the country in both "NCCI states", and "IRB States".⁴ The PowerPoint Slide at p.57 in the presentation by Insurance Information Institute President Robert P. Hartwig, Ph.D. at NCCI's May 2013 Annual Issues Symposium,

“Property/Casualty Insurance in the Post-Crisis World: Opportunities, Trends, and Challenges” graphically illustrates that point.^{5,6,7,8}

“A Self-Inflicted Wound”

On 9 October 2001, former Georgia Gov., Roy Barnes appointed The Governor’s Workers’ Compensation Review Commission which performed the first-ever analysis of Georgia’s Workers’ Compensation System. Released to the public on May 20, 2003, was the highly acclaimed report of that Commission, prepared by Review Commission Chairs, Thomas A. Eaton, J. Alton Hosch Professor at the University of Georgia School of Law and David B. Mustard, Associate Professor, Terry College of Business, University of Georgia.⁹

The appointment of The Review Commission was a pre-emptive response to the 1999 Strategic Study by Conning & Company of Hartford, Ct., “Workers’ Compensation Storm Clouds on the Horizon”. Those Georgia residents who read the Strategic Study knew that a “reform” movement had already begun in other states and believed that a commission which studied and reported to the public and legislators positive data might avert “reform” in Georgia. At P.18 of the Conning & Company study:

“Workers’ Compensation insurers have much more control over their financial performance today than they had in the past. Unfortunately, they lack the courage to take control.”¹⁰

Among other factors, premium “discounting” resulting from the extreme competition of the late 90s, following the previous “round of reform” was cited as a looming problem.

“Another important characteristic of this industry is that because of industry discounting, employers’ premiums can change even though the manual rate approved by the insurance commissioner remained the same.”¹¹

From 1991-2000 the annual average premium discount in Georgia was 17.7%, 3.9 percentage points higher than the average annual national rate of 13.8%. That “gap” was even wider in 1998 – 2000 when Georgia’s average “discount” was 33.7% compared to the national average of 21.5%.¹² As premium discounting began to decline, employers naturally began paying higher premiums even though the manual rate had not changed.¹³ At that time, and as most recently noted in the September 2013 Insurance Information Institute update, ascending premiums are a harbinger of impending “reform”. Georgia responded by creating the Review Commission which included claimant and defense attorneys, representatives of self-insured employers, the Property and Casualty Industry, politicians and others. Ultimately, 2 years of data collection and analysis averted “reform” which would have impacted negatively injured workers and/or their legal representatives as well as medical providers – without effecting concomitant “savings” for employers – a recurring theme.

Meanwhile, Across the Savannah River - - -

Heavy premium discounting had also been occurring in South Carolina in the late ‘90s and into 2000. Within a couple of years, the South Carolina General Assembly deregulated the loss cost multiplier, the proponents assuring South Carolina legislators that “deregulation” would keep premiums down because of “free market competition”.

Well, of course, the opposite occurred. By 2005, NCCI proposed an average 32.9% increase in workers’ compensation loss costs. An unlikely coalition was formed to challenge the rate increase. The South Carolina Small Business Chamber of Commerce,¹⁴ The South Carolina Injured Worker Advocates¹⁵ and the South Carolina

Insurance Consumer Advocate¹⁶ joined forces. In October 2006, the rate increase proposed by NCCI was reduced by 44%. Similar successes have followed.¹⁷

Interestingly, a significant factor in the rate reduction in South Carolina was the discovery of the failure of insurers to “account for” the reimbursements which employers (actually, their insurers) had received from South Carolina’s Second Injury Fund, an “omission” which affected the “experience mods” of numerous South Carolina employers.

That the volume of such “errors” could have occurred at all is alarming; but, also suspicious since NAIC had released the Executive Summary – August 1 Multi-State Examination of the National Council on Compensation Insurance in March 2005.¹⁸

The examination of NCCI had been initiated in March 2000 by the Oregon Department of Consumer and Business Services Insurance Division (OID) which proposed to enter into a contract for examination of statistical reporting and experience rating procedures of NCCI. Arthur Anderson LLP (AALLP) was chosen by OID, after consulting with the twelve other examination participating jurisdictions. Twenty-four states then agreed to permit OID to have access to their unit report and experience rating data. Those states included South Carolina. Six additional states granted permission for only their experience ratings data to be included in the review.

Readers of this article are encouraged to download the Executive Summary available via the hyperlink provided at End Note 18, to read it carefully and then ponder this question: “How did so many workers’ compensation insurers writing coverage in South Carolina make the same “mistake” of failing to “account for” the SIF reimbursements made to employers in South Carolina?”

“Economic Cycles or”

“Swings” between a highly competitive market accompanied by premium “discounting” and a “hard” market in which “coverage” is more costly, when insurers “cherry pick” the risks they’re willing to insure in the “voluntary market”; when employers may be forced into the “residual” market, are often described as “cycles” over which Property & Casualty Insurers have little control.^{19 20} Or, so they claim.

Insurance Regulation – A State Function

The following articles and documents were chosen to provide both “history” of insurance regulation and examples of the difference in regulatory “philosophy” between States which apply “prior approval” and those which have adopted a “file and use” or “use and file” process:

- The Enigma Variations: Comp rates in Connecticut and Massachusetts.²¹
- The history of Rate Regulation in Workers’ Compensation, Mealey NCCI (2012)²²
- Analysis of Property/Casualty Insurance Rate Regulatory laws, Property Casualty Insurers Association of America (11/20/10)²³
- Florida’s Workers’ Compensation Insurance Rating System, The Florida Senate Interim Project Report 2006-101 (Nov. 2005)²⁴
- Mass. Workers’ Compensation Rating and Inspection Bureau August 31, 2012 Rate Filing²⁵

Readers should become familiar with the workers’ compensation insurance regulatory process in their respective states and should consider purchasing and reading this book, written in simple language for employers, which explains the rate making process in each state: “Workers’ Compensation: A Field Guide for Employers”, Priz, Advanced

Insurance Management LLC (2010). The soft bound edition is available for about \$20.00 from Amazon.com.

The National Association of Insurance Commissioners (NAIC)

The NAIC²⁶ offers helpful publications, many of which are available for free download.²⁷ In addition to the Multi-State Examination of the National Council on Compensation Insurance, Inc. – Executive Summary,²⁸ the author invites readers to peruse the list of white papers available for free download at http://www.naic.org/store_pub_whitepapers.htm#fraud_related_databases As readers begin planning how to access data, they should first read:

Regulatory Access to Insurer Information: The Issues of Confidentiality and Privilege
This white paper analyzes the issue of regulatory access to documents that insurers maintain are protected or are otherwise confidential. A fundamental concern is the interplay between regulatory access and third-party access through public records laws, litigation discovery and other means. It includes the following sections: How Existing NAIC Model Laws Address Confidentiality; Basis for Assertions of Confidentiality and Privilege; Confidentiality Issues with Regulatory Examinations/Investigations; and Distinguishing Access by Regulators from Access by Third Parties. Copyright 2000.

Publication: ICP-OP

Title: Regulatory Access to Insurer Information

Price: Free PDF

Hyperlink: <http://www.naic.org/store/free/ICP-OP.pdf>

Numerous helpful resources, white papers and data compilations are available for purchase from the NAIC “store” –

http://www.naic.org/store_pub_naic_state.htm#dept_resources

At a minimum, readers are encouraged to purchase the following, the descriptions of which are from the NAIC website:

A Regulator's Introduction to the Insurance Industry

This publication provides insurance regulators and others with a basic introduction to the insurance industry and its regulation, written from a regulatory perspective. It explains key insurance concepts and products, outlines the industry's economic structure and reviews the important elements of the system of regulation. The goal is to help readers understand how the industry functions and how regulatory mechanisms and policies are designed and implemented to foster the industry's development and protect consumers. Copyright 2005.

Publication: RII-ZBA

Title: Regulator's Introduction to the Insurance Industry

Price: \$25.00

Insurance Department Resources Report

The Insurance Department Resources Report provides key statistics on the resources and regulatory activities of the 56 NAIC-member jurisdictions. Comparative reports include a variety of information — including number of departmental staff, annual budgets, revenues collected, premium volume, number of insurers and producers, and number of consumer complaints filed. Data displayed for easy reference and comparison. Updated annually.

Publication: STA-BB

Title: Insurance Department Resources Report

Price: (Non-Members): \$275.00**

States' Prescribed Differences from NAIC Statutory Accounting Principles

The Accounting Practices and Procedures Manual presents a comprehensive basis of accounting that should be followed if not in conflict with state statutes and/or regulations. Should the domiciliary state set forth accounting guidance that differs from the AP&P Manual, disclosures of such must be made. This publication provides information regarding each state's prescribed differences from NAIC statutory accounting principles, including a citation to the respective state statute and/or regulation. Updated annually.

Publication: SPD-OP

Title: States' Prescribed Differences from NAIC Statutory Accounting Principles

Price: (Non-Members): \$110.00**

Market Share by Line Reports

Get detailed information on market share and loss ratios for property/casualty companies by specific line of business. Each report includes data on the top 125 groups/companies countrywide, as well as 99% of the marketplace in each jurisdiction. Updated annually.

Publication: MSR-BLWC

Title: Workers' Compensation and Excess Workers' Comp

Price: (Non-Members): \$220.00**

Profitability by Line by State

Statistics derived from state page data in the annual statement and the Insurance Expense Exhibit can be used to compare profitability among different states and property/casualty lines. For each line and each state, this publication presents aggregate statistics on premiums, losses, expenses, investment income and estimated profits for the preceding calendar year. Also shows estimated underwriting profits and operating profits, as well as estimated federal taxes. Updated annually.

Publication: PBL-PB

Title: Profitability by Line by State

Price: (Non-Members): \$275.00**

Statistical Handbook of Data Available to Insurance Regulators

Insurance regulators use statistical data to evaluate the rates and rating structures used by insurers in their respective jurisdictions. This publication describes the collection, compilation and reporting of insurance statistical information. The procedures and reports described in this handbook are consistent with the NAIC Model Regulation to Require Reporting of Financial and Statistical Data by Property and Casualty Insurance Companies, as well as the minimum uniform statistical plans and model report formats recommended by the NAIC's Statistical Information Task Force. Copyright 2012.

Publication: STA-ZU

Title: Statistical Handbook of Data Available to Insurance Regulators

Price: \$150.00

An Overview of Data Reporting – Sources

The author recommends that those new to the exciting world of workers' compensation data reporting begin with the website of Insurance Data Management

Association,²⁹ and then be sure to read carefully the webpage, “Data Management Best Practices”,³⁰ and the excellent “White Paper on Data Quality.”³¹

Next, to become familiar with the specific data reported, readers hereof should visit the website of “WCIO” - Workers’ Compensation Insurance Organizations,³² the members of which are the eleven “Independent Rating Bureau” States.³³ Also members are the Insurance Services Office, Inc.³⁴ and National Council on Compensation Insurance, Inc. (“NCCI”)³⁵ WCIO has developed standards for electronic transmission of information between insurers and rating/advisory organizations, creates and periodically revises the actual data reporting manuals.³⁶ Readers are encouraged to study the WCIO “Data Dictionary” available on the WCIO website to become familiar with data terminology.³⁷

Now you’re ready to explore the website of NCCI. The author recommends opening and reading these hyperlinks in this order:

NCCI Home Page: <https://www.ncci.com/nccimain/pages/default.aspx>

- Overview of NCCI Data Types:

https://www.ncci.com/nccimain/datareporting/dataquality/pages/overview_ncci_data_type.aspx

- Complete list of Educational Resources:

<https://www.ncci.com/NCCIMain/Education/CompleteList/Pages/default.aspx>

- NCCI Data Reporting:

<https://www.ncci.com/NCCIMain/Education/DataReporting/Pages/default.aspx>

- NCCI Presentations Available:

<https://www.ncci.com/nccimain/Events/MinutesPresentationsMaterials/Pages/2013DataEdPresentations.aspx>

- State Advisory Forum Presentations (by state, by date of presentation):

https://www.ncci.com/nccimain/events/nccievents/pages/ncci_2013stateadvisoryforums.aspx

- Regulatory Activities:

<https://www.ncci.com/NCCIMain/IndustryInformation/RegulatoryActivities/Pages/default.aspx>

- Actuaries – Webinars on Demand:

<https://www.ncci.com/NCCIMain/Education/Actuaries/Pages/default.aspx>

How Accurate is The Data Reported to NCCI and Independent Rating Bureaus?

Probably as accurate as many Schedule “Cs” to individual Income Tax Returns.

The Tax Reform Act of 1986 was “kind” to the Property and Casualty Insurance Industry.^{38 39 40} Property and Casualty Insurers file IRS Form 1120-PC knowing that the risk of an audit is minimal - only 1.6% of Corporate “C” returns (which include IRS Form 1120-PC), were examined in fiscal year 09/30/12-10/01/13.⁴¹

Georgia has a second injury fund which was created in 1977; but, like South Carolina’s “SIF”, has been “sunsetting”. The author is unaware of the existence of any study examining whether employer/insurers’ reserves have been reduced to the statutory threshold as required by O.C.G.A. §34-9-360(c); and/or whether the reimbursements by Georgia’s SIF were factored into the experience modification of employers which would be a component of the data which Georgia requires be submitted to employers by insurers before such data is submitted to NCCI. See, O.C.G.A. §34-9-136.⁴²

“Mistakes” To Look For. . . .

As readers have now learned, “errors” which cost employers premium dollars can occur when SIF reimbursements made to employers (actually, their insurers) are

conveniently “forgotten” when “experience mods” are calculated. Another common “mistake” can be made when the employer is placed in a higher premium class code.⁴³

However, the author’s research suggests that it is in the “medical side” of benefit delivery that the most “errors” occur and costs are frequently miscategorized. For example, for years, NCCI has reported that the Medical Care percentage of Georgia claims cost has exceeded 50%; yet, Georgia’s SITF has analyzed the indemnity/medical ratio every year between 1992 and 2010 and the SITF “medical share” has never exceeded 50%. In fact, the average annual “medical share” over that time period has been 41.4%.⁴⁴ Since Georgia’s SITF reimburses statewide for injuries, medical conditions, the demographics of which would be a microcosm of the claims of insured and self-insured employers, the SITF’s data would seem to support the conclusion that something “flying below the radar” is inflating the medical care “share”.

Perhaps one explanation for the low medical care share is found in an SITF Administrative Rule which limits SITF reimbursement “. . . where the employer or insurer was eligible for further cost reductions, the fund will reimburse the lesser amount.”⁴⁵

Readers hereof may wonder to what the words, “was eligible for further cost reductions” refers. Among other things, it could refer to PPO discounts, often “silent PPOs”.⁴⁶

A greater burden to “The System” than “silent PPOs” appears to be the inclusion of “Medical Cost Containment Programs” (“MCCP”), often referred to as “utilization review” in “medical treatment” data.

How much “Medical Cost Containment Programs” (“MCCP”) is skewing/inflating the actual medical care claim cost is unknown; but, perhaps can be inferred from California data after 07/01/2010:

“Beginning with claims incurred on policies incepting on or after July 1, 2010, the cost of medical cost containment programs (MCCP) is reported to the WCIRB [*California’s independent rating bureau*] as allocated loss adjustment expense (ALAE) rather than as medical loss.”⁴⁷

By “breaking out” the cost of “MCCP” from “medical”, the mischaracterization in California of ALAE as “medical” resulted in this conclusion:

“The projected average ALAE cost of a 2012 indemnity claim, excluding MCCP costs, is approximately 3% above that of the prior year and approximately 89% higher than the average ALAE severity for 2005.”⁴⁸

The effect of proper characterization of MCCP in data reporting upon medical care costs is illustrated graphically in the December 10, 2012, Research Report by California Workers’ Compensation Institute, “Medical Development Trends in California WC, AY 2002 – 2011 Claims” in which it was determined that the percentage of medical expense sub-category for treatment had declined from 84.8% in 2002 to 72.6% in 2010. Similarly, the prescription-medication “share” had increased barely one percent between 2002 (6.1%) and 2010 (7.2%). What had increased dramatically, however, was Medical-legal/MCCP – an increase of 231.1% over the same period.⁴⁹

Unfortunately, the effort made by California to prevent the mischaracterization of ALAE (MCCP) as “medical” (treatment) has not received similar “official” attention in most other states, allowing costs to be added to the system for which injured workers, their attorneys and their physicians are regularly blamed.

A cost to the system from excessive urine drug screening is one emerging example.⁵⁰ California's Workers' Compensation Institute concluded that the cost of drug testing exploded from a total of only \$142,481 in 2004 to \$27.4 million in 2011.⁵¹

Insurers and TPAs are also adding "unit" costs for their administration of claims.^{52 53 54}

Finally, readers hereof are encouraged to read the May 2013 Issue 6 and the September 2013 supplement to Issue 6, John Burton's Workers' Compensation Resources, to appreciate the complexity of data interpretation; but should not be intimidated by that complexity.⁵⁵

CONCLUSION

Knowledge of workers' compensation data reporting, the insurance regulatory process in your state is only the beginning point. Representatives of injured workers, the "stakeholders" most likely to be affected by "reform", must establish working relationships with other "stakeholders" to develop means to obtain and review carefully workers' compensation data pertinent to your jurisdiction. Demanding data; but not knowing if the data reported in your state is accurate is likely "to backfire". Reform movements, such as those which threatened Georgia and South Carolina in the early/mid 2000s, can be thwarted with accurate data; therefore readers hereof are encouraged to become familiar with the resources provided herein to be certain that you have current data before a "reform movement gains traction."

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- 1 <http://www.businessinsurance.com/article/20130324/NEWS04/303249990>
 - 2 http://www.iii.org/issues_updates/workers-compensation.html
 - 3 Id.
 - 4 <http://www.ncci.com/NCCIMain/DataReporting/GuidesGuidelies/Pages/StateCharts.aspx>
<http://www.wcrb.org/wcrb/links.asp>
 - 5 Robert_Hartwig-NCCI_AIS-2013.pdf at P.57 of 86
 - 6 <http://www.businessinsurane.com/article20130602NEWS04/306029978>
 - 7 <http://www.cbpporg/cms/index.cfm?fa=view&id=3252>
 - 8 http://www.iii.org/assets/docs/pdf/NCCI_IssuesReport_2011.pdf
 - 9 http://digitalcommons.law.uga.edu/fac_artchop/122/
 - 10 “Storm Clouds on the Horizon”, Conning & Co., 1999
 - 11 http://digitalcommons.law.uga.edu/fac_artchop/122/
 - 12 Id. At P.29.
 - 13 Id. At p.30.
 - 14 <http://www.scsbc.org/>
 - 15 <http://injuredworkersadvocates.com/>
 - 16 URL for agency: <http://www.consumer.sc.gov/Pages/default.aspx>
 - 17 http://www.scsbc.org/issues.aspx?article_id=35
http://www.consumer.sc.gov/consumer/PressRelease/Documents/2005/wc_rate_hearing.pdf
<http://www.consumer.sc.gov/consumer/PressRelease/Documents/2008/08037.pdf>
 - 18 <http://www.naic.org/store/free/NCC-ES.pdf>
 - 19 “Recalling the Crisis of 1991” Rousmaniere, Peter, 11/1/11:
<http://www.riskandinsurance.com/story.jsp?Id=533342639>
 - 20 Workers Compensation and Economic Cycles: A Longitudinal Approach
Hartwig, et al,
<http://www.casact.org/pubs/proceed/proceed07/97660.pdf>
 - 21 <http://workerscompinsider.com/2012/10/the-enigma-vari.html>
 - 22 <https://www.ncci.com/Documents/IssuesRpt-2012-Mealy.pdf>
 - 23 <http://www.leg.state.nv.us/Session/76th2011/Exhibits/Assembly/CMC/ACMC2791.pdf>
 - 24 http://archive.fl.senate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-101bi.pdf
 - 25 https://www.wcribma.org/mass/Products/Circulars/2012_Circulars/c12202.pdf
 - 26 <http://www.naic.org/>
 - 27 <http://www.naic.org/store/free/>
 - 28 See End Note 18.
 - 29 <http://www.idma.org/index.htm>
 - 30 <http://www.idma.org/productsDMBestPractices.htm>
 - 31 <http://www.idma.org/productsWhitePaperDataQuality.htm>
 - 32 <https://www.wcio.org/default.aspx>
 - 33 <https://www.wcio.org/Document%20Library/AboutPage.aspx>
 - 34 <http://www.iso.com/>
 - 35 <https://www.ncci.com/nccimain/pages/default.aspx>
 - 36 <https://www.wcio.org/Document%20Library/DataSpecificationsManualPage.aspx>
 - 37 <https://www.wcio.org/Document%20Library/DataDictionaryPage.aspx>
 - 38 <http://www.treasury.gov/resource-center/tax-policy/Documents/Property-and-Casualty-Insurance-Company-Taxation-4-1991.pdf>
 - 39 <http://www.stepto.com/assets/attachments/2324.pdf>
 - 40 http://www.casact.org/library/studynotes/7U_Feldblum2007.pdf
 - 41 <http://www.irs.gov/pub/irs-soi/12databk.pdf>
 - 42 “NCCI has revised the “split point” used to determine experience mod. See four part series beginning
17 December 2012.”
<http://www.workerscompinsider.com/2012/12/the-experience.html>

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- 43 http://www.workerscompensationshop.com/workers_compensation_class_codes.htm
- 44 <http://sitf.georgia.gov/>
- 45 <http://sitf.georgia.gov/rule-622-1-04>
- 46 <http://www.healthlawyers.org/Events/Programs/Materials/Documents/PPMC09/ziegler.pdf>
- 47 http://www.wcirb.com/sites/default/files/documents/063013_insurer_exp_report.pdf
- 48 http://www.wcirb.com/sites/default/files/documents/063013_insurer_exp_report.pdf
- 49 <http://www.cwci.org/research.html>
- 50 <http://www.riskandinsurance.com/story.jsp?storyId=533355075>
- 51 "Drug Testing Utilization and Cost Trends in California Workers' Compensation" Swedlow & Young, May 2012
<http://www.cwci.org/research.html>
- 52 WorkCompwire Walls: "Common Sense Approaches to Utilization and Medical Bill Review":
<http://www.workcompwire.com/2013/09/mark-walls-common-sense-approaches-to-utilization-and-medical-bill-review/>
- 53 www.businessinsurance.com/article/20131013/BLOGS02/131019943
<http://www.businessinsurance.com/article/999999999/NEWS080101/399999976>
www.businessinsurance.com/article/20130811/BLOGS02/130819998
- 54 www.casact.org/pubs/dpp/dpp96/96dpp137.pdf
- 55 <http://workerscompresources.com/>