

A Real-Life Anatomy of A Catastrophic Claim: From Deposition to Done

Presented by

David Parker, esq. and Megan Lucchesi, esq.
Shareholders, Parker, Kern, Nard & Wenzel

Disclaimer

This presentation is meant to convey general information only. It is not meant to impart specific legal advice concerning legal problems or issues to individuals or other business entities.

Should you wish to refer a legal matter you must contact an attorney for purposes of legal retention. No attorney-client relationship can be formed without a written retention agreement and/or fee agreement signed by both the lawyer and the client defining the scope of the retention. Do not provide or impart confidential information through this lecture until Parker, Kern, Nard & Wenzel confirms in writing the absence of a conflict of interest.

Scope

The basis of this presentation is to provide an insight into the differences between litigation in the civil forum and litigation under the workers' compensation forum.

Identifying A Catastrophic Case

Catastrophic loss defined: “Loss in excess of the working layer, usually of such magnitude as to be difficult to predict and therefore rarely self-insured or retained.”

Identifying A Catastrophic Case

Labor Code section 4600

- Medical and Hospital Treatment

Labor Code sections 4660-4660.1

- Disability Payments

Labor Code section 4662(b)

- Permanent Total Disability

Initial Investigation

Title 8 California Code of Regulations § 10109

A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.

The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment. The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.

Initial Investigation

- Who, what, where, when, why, how
- Consider experts not on benefits but liability issues.
- Engineers, accident/evidence preservation
- Get out to the scene before something changes, is altered or accessed by adversarial parties.
- Retain counsel immediately.
- Expect litigation, protect and preserve attorney client privileges and work product sooner rather than later.

Forum Issues

- Is your entity a third-party target?
 - If so, “race to the courthouse.” (Citations)
- Consider: Workers' Compensation Appeals Board forum preferably to a civil forum? If so, file first. (Citations)
- Sample redacted pleadings actual case confirming Workers' Compensation Appeals Board jurisdiction over employment.

Discovery



Expect the unexpected.

“But I don't want to go among mad people,’ Alice remarked.” Lewis Carroll, Alice in Wonderland.

Discovery

- Persons most qualified.
- Persons most knowledgeable.
- Depositions of multiple employer witnesses.
- Depositions of custodians of records.
- Engineers

“Lions and Tigers and Bears, oh my.” -L. Frank Baum

Discovery

Beware: what happens in comp does not necessarily stay in comp. Two lawyers, one for workers' compensation defense one for possible later civil defense.

“We don’t do that in comp” will be no defense.

Discovery



Listen and learn during discovery.

Legal theories play out in questions asked and arguments during discovery. Look for the signs.

Discovery



Sample redacted deposition notices actual pending cases.

Mandatory Settlement Conference

Labor Code section 5502

A hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed

Calendar also allows for Expedited Hearings and Priority Conferences

Mandatory Settlement Conference

- Pre-Trial Conference Statement.
- Disclose the essential, no more, no less.
- Do not obfuscate, no “ambushing.” However, no volunteering.

Mandatory Settlement Conference

Better to over name or overproduce as opposed to under?
That is the question.

Worst case is you leave something out

Trial



Labor Code section 5313 “The appeals board or the workers compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy.”

You have to give the Workers' Compensation Administrative Law Judge all the facts upon which to make favorable findings.

Questions?

*If you're too nervous to ask in front of everyone,
email us at dparker@pknwlaw.com or
mlucchesi@pknwlaw.com*

THANK YOU!

Disclaimer

This presentation is meant to convey general information only. It is not meant to impart specific legal advice concerning legal problems or issues to individuals or other business entities. Should you wish to refer a legal matter you must contact an attorney for purposes of legal retention. No attorney-client relationship can be formed without a written retention agreement and/or fee agreement signed by both the lawyer and the client defining the scope of the retention. Do not provide or impart confidential information through this lecture until Parker, Kern, Nard & Wenzel confirms in writing the absence of a conflict of interest.