



The Hidden Costs of Employee's Compensation Insurance – and how to mitigate them

The case for improved Claims Management and Rehabilitation Procedures

The Hong Kong Construction Association
6th January 2010

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Introduction

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- Nigel Wood
 - Director – Jardine Lloyd Thompson Limited
 - Responsible for Hong Kong and Macau Construction Business

- Chetwyn C.H. Chan, PhD
 - Chair Professor of Rehabilitation Sciences
 - Ergonomics and Human Performance Laboratory
 - Department of Rehabilitation Sciences, Hong Kong PolyU

- Fanny Li
 - Divisional Director – Jardine Lloyd Thompson Limited
 - Responsible for JLT's Claims Management Division



Introduction

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- Setting the Scene
- Rehabilitation – what is it and how does it work?
- Claims Management & Administration – what is it and how does it work?
- Wrap up / Conclusions



Setting the Scene

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- The ECI Market
- Claims Experience – Statutory & ECO
- Claims Issues
 - Independent Medical Assessments
 - Prolonged periods of sick leave/absence from work
 - “Suspicious” cases
 - Lawyers/Recovery Agents/Legal Aid/Claims Companies/Trade Unions
 - Hidden Costs to the Contractor
- Front End – Site Safety. Reducing the number of incidents leading to injury and claims
- Back End – Management of claims once an injury has occurred



ECI Market

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- Number of insurers “fallen by the wayside” over the years
- Limited number of insurers prepared to write ECI for the construction industry
- Not an attractive proposition:
 - High frequency of claims/severity
 - Statutory (no blame) liability – attritional claims
 - Long tail i.e. can be a number of years before claims closed
 - Difficult to generate profit
 - Burning Costs for construction ECI believed to be >1%



Claims Statistics

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Overview of Underwriting Results - General Liability (Statutory Business) Source: Office of the Commissioner of Insurance		
Year	Underwriting Profit / (Loss) 000's	HKD
1997	-\$238.80	
1998	-\$730.20	
1999	-\$1,370.00	
2000	-\$1,091.40	
2001	-\$1,029.00	
2002	-\$161.70	
2003	-\$107.60	
2004	-\$263.90	
2005	-\$136.40	
2006	-\$84.90	
2007	-\$163.90	
2008	-\$489.30	
Total: 1997 - 2008	-\$5,867.10	

Claims Issues

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- No compulsory requirement for an independent medical assessment – if one occurs it is normally only when the claim / litigation is well advanced
- Prolonged periods of sick leave granted – no independent review
- “Suspicious Cases” – particularly towards the end of a contract
- Lawyers / Recovery Agents / Legal Aid / Claims Companies / Trade Unions

All have a hidden cost to the contractor



Management of Claims

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- “Front End” – prevent the incident happening
 - Not for today
 - Numerous initiatives at corporate and industry level

- “Back End” – management of the claim once an injury has occurred
 - Specialist providers – medical, rehabilitation, etc
 - Management and co-ordination between parties





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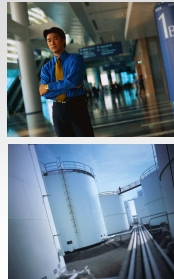
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Case Sharing – Mr. Wong

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- 46/M, mixer truck driver in a Construction Co.
- DOA: 28 Dec 2005
- Right hand trapped by the blade of the truck when cleaning mixer truck with water hose
- Admitted to PWH:
 - Diagnosis: Index and middle finger crushed (bone, tendons, nerves injured)
- 2 operations done (tendon repair, bone repair)



(To be continued)

Case Sharing – Claims Handling (1)

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- Regular follow ups and treatments at Government Hospitals
- 2 months sick leave issued by Government Hospital during each visit until 24 months
- Unable to resume pre-accident duties
- Labour Department refers his case to Legal Aid due to his sick leave reach 18/24 months
- Mr. Wong commences legal proceedings against his employer and Main Contractor



Case Sharing – Claims Handling (2)

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- EC has been settled in 2009 and common law proceeding still in progress
- Claims reserve for Mr. Wong's damages is HKD1.5M plus both parties' legal costs HKD700K, totally HKD2.2M

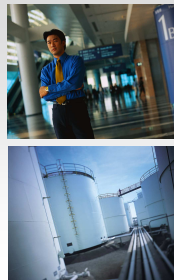


Case Sharing – Claims Mgt (1)

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- Case Manager visited Mr. Wong the next day after the accident
- Case Manager arranged and accompanied Mr. Wong to see Work Injury Panel O&T Dr on 18 Jan 2006 (1 week after the accident)
- Confirmed comminuted Right index finger fracture & head of 3rd Metacarpal bone fracture
- Mr. Wong continued to receive Work Injury Panel treatments



Case Sharing – Claims Mgt (2)

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- 2 more operations (Aug & Nov 2006) of tendon release was done
- Physiotherapy and occupational therapy at PWH
- Work Injury Panel Dr referred Mr. Wong to have Functional Capacity Evaluation at the panel rehabilitation clinic
 - Result: unable to make full grip, unable to control steering wheel
 - ➔ More rehabilitation needed

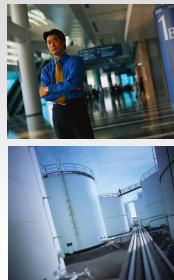


Case Sharing – Claims Mgt (3)

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- Case Manager communicated with Mr. Wong's Employer who arranged Modified duties since 13 Feb 2007 (14 months after accident)
 - Stamping in/out at entrance of mixer truck parking site
 - Working with other mixer truck drivers as assistance
 - Driving private car for colleagues

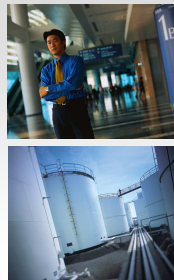


Case Sharing – Claims Mgt (4)

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- Case Manager arranged driving test at driving school in Mar 2007
 - Result: satisfactory but weak in steering and gear control
 - Case Manager arranged gear control training
 - Case Manager communicated with Mr. Wong's Employer who arranged on-site-assessment for Mr. Wong in Jun 2007
 - Result: PASS
- ➔ Mr. Wong resumed Normal Duty afterwards



Claims Mgt v. Claims Handling

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- Sick Leave Period
 - 14 months (claims mgt) v. >24 months (HA)

- Loss of Earning Capacity
 - 10% (claims mgt) v. 20%

- Common Law Claim
 - HK\$0 (claims mgt) v. HKD1.5M

- Legal Costs
 - HK\$0 (claims mgt) v. HK\$700K



Shortened the recovery period & minimized LOEC by arranging treatments, work hardening, communicating with Employer...

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CIVIL JUSTICE REFORM

Civil Justice Reform

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- New litigation culture and new emphasis
 - Advanced Preparation (as opposed to preparation as the case progresses)

- Active case management by the Court

- Period for filing Defence or Reply is extended to **28** days and Defence is expected to be more specific
 - A Defendant denying an allegation in the Statement of Claim has to state his reasons and where appropriate, state his own version of facts



Civil Justice Reform

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- Statement of Truth
 - Witness statements
 - Expert reports
 - Pleadings, Defence...etc
- On the Court's own motion, Further & Better Particulars may be ordered
- Mediation (effect from 2 Jan 2010)





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Conclusions – the current system

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- Imposes a strict statutory liability and a liability at Common Law
- Imposes a requirement to insure
- Imposes obligations on the Employer but not the Employee
- Does not address how claims are to be dealt with (other than procedurally)
- Many “hidden” costs
- Tends towards an adversarial approach to settlement
 - Employer / Insurer (least cost) vs Employee (maximise payout)



Claims Management and Rehabilitation Approach

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- Greater focus on the injured party
 - Albeit that greatest challenge is securing “buy in” from employees
 - From time of injury to return to work
 - Mitigating long term consequences of injury and enhancing future employment prospects
 - Significant cost savings – Mr Wong > HKD2,000,000
- Needs to be / should be part of a wider approach to “Worker Health & Safety” and training
- Requires commitment from senior management (board level) to drive the process



It does work....

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Year	Incident Rate (per 1,000 workers) Base Year 1 = 100 (for illustration)	Year on Year Change (%)
Year 1	100	
Year 2	87.84	-12.162
Year 3	88.11	0.308
Year 4	62.70	-28.834
Year 5	45.41	-27.586
Year 6	51.89	14.286
Year 7	32.97	-36.458



Civil Justice Reforms

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These reforms effective from the start of 2010 will have a significant impact on the handling of EC claims and will increase the importance of the proper management and administration of claims – in particular:-

- The use of Mediation; and
- Case Management by the Courts

Increased need to focus on the management of claims



WIN – WIN – WIN

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A properly administered Claims Management and Rehabilitation scheme can produce a:-

- WIN – for the Employer
 - Direct cost savings – insurance premiums, administrative time, etc
 - Indirect costs savings – improved incident rates (ability to tender);

- WIN – for the Employee
 - Quicker assessment of injury and treatment
 - Quicker access to certain treatment
 - Reduced likelihood of long term incapacity / improved ability to return to work

- WIN – for the Insurer
 - Reduced cost of claims
 - Earlier closure of claims and release of reserves

