RILEY BENNETT EGLOFF LLP

Handling Indiana Worker's Compensation Claims

November 2022

- **Donald S. Smith - DSmith@RBELAW.com**
- **Jeffrey B. Fecht - JFecht@RBELAW.com**
- **Miranda Weiss Bernadac - MBernadac@RBELAW.com**
- **Justin O. Sorrell - JSorrell@RBELAW.com**
- **Travis R. Watson - TWatson@RBELAW.com**
- **Alexis R. Jenkins - AJenkins@RBELAW.com**
- **Candy S. Royer - CRoyer@RBELAW.com**
- **Jennie Maguire - JMaguire@RBELAW.com**
- **Ruth R. Lotshaw - RLotshaw@RBELAW.com**

RILEY BENNETT EGLOFF LLP

Riley Bennett Egloff, LLP maintains a comprehensive business and litigation practice, providing legal services to local, regional, national, and international companies. With 40 years of service to the business and insurance communities, the Firm features a worker's compensation team which is fully integrated within an employment law practice, providing clients with representation in virtually every aspect of employer-employee relations. The Firm represents employers, insurance carriers, and third-party administrators before the Worker's Compensation Board of Indiana in all of its geographic districts around the state.

The worker's compensation team, headed by partner Don Smith, is pleased to provide this manual: Handling Indiana Worker's Compensation Claims. This manual is not intended to be a substitute for legal advice or an exhaustive treatise. For additional information, clarification, fact-specific advice or updates as Indiana law continues to change and evolve, please contact our offices. We appreciate each opportunity to serve you.

Employment and Worker's Compensation Law
Answers, Advice and Advocacy

Our Worker's Compensation Team

Donald S. Smith - Partner

Jeffrey B. Fecht - Partner

Miranda W. Bernadac - Partner

Justin O. Sorrell - Partner

Travis R. Watson - Associate

Alexis R. Jenkins - Associate

Candy S. Royer - Nurse Consultant

Jennie Maguire- Nurse Consultant

Ruth R. Lotshaw - Paralegal

TABLE OF CONTENTS

Exhibits (Tabs 3 through 10)

3. Checklist of Defenses.
4. Statutes of Limitations.
5. Subrogation and Lien Rights in Third-Party Claims.
6. Schedule of injuries for determining permanent partial impairment benefits.
7. Compensation information for injuries occurring July 1, 2014 to June 30, 2015.
8. Compensation information for injuries occurring July 1, 2015 to June 30, 2016.
9. Compensation information for injuries occurring on or after July 1, 2016.
10. Forms:

    Worker's Compensation Notice (English)

    Worker's Compensation Notice (Spanish)

    Employer's Report of Injury/Illness of Employee (Form 34401)

    Agreement to Compensation of Employee and Employer (Form 1043)

    Request for Additional Time to Determine Liability (Form 48557)

    Notice of Denial of Benefits (Form 53914)

    Report of TTD Termination/Request for Independent Medical Examination (Form 38911)

    Application for Adjustment of Claim (Form 29109)

    Application for Adjustment of Claim for Provider Fee (Form 18487)

    Employee Waiver of Examination by Personal Physician (Form 53913)

    Request for Assistance (Form 45442)

    Notice of Suspension of Medical Benefits (Form 54217)

    Board Districts and Hearing Members

AN OVERVIEW OF THE INDIANA WORKER'S COMPENSATION ACT

I. COVERAGE

The Indiana Worker's Compensation Act (the "Act") is applicable to all employers and employees where an "Indiana employment" is involved. An Indiana employment generally exists where there is an employment that contemplates performance of services in the State of Indiana, often involving either an Indiana employer or an employee who is a resident of Indiana. If an Indiana employment relationship exists, the Act will apply even though the injury occurs while the employee is working outside of Indiana.

The Indiana Worker's Compensation Act does not apply to certain railroad employees, nor does it apply to individuals who are members of a municipal fire department or police department unless the municipality elects to come within the provisions of the Act and purchases worker's compensation insurance. In addition, the Act does not apply to "casual laborers," farm or agricultural employees, or to household employees, unless the employer has filed the appropriate form with the Indiana Worker's Compensation Board ("the Board") electing coverage. The Act provides limited benefits for student workers.

An employee is considered a "casual laborer" if the employment is both casual and not in the usual course of the trade or business of the employer. The Indiana Worker's Compensation Board has historically displayed a reluctance to exclude an employee from coverage under the Act by finding him to be a casual employee.

The Act allows certain individuals traditionally regarded as employers or independent contractors to elect coverage as employees within the meaning of the Act. Upon service of written notice to the insurance carrier and the Board, partners in a partnership, managers in a limited liability company, and sole proprietors may elect coverage under the Act. Ind. Code §22-3-6-1(b)(4), (5), and (9). The executive officers of a corporation are regarded as employees and do not need to make any election. Certain owner-operators of trucks engaged in interstate commerce may also elect coverage under the motor carrier's policy or its self-insurance program if the owner-operator pays the premiums as requested by the motor carrier. Ind. Code §22-3-6-1(b)(8). On the other hand, real estate agents paid by commission qualify as independent contractors and not employees. Ind. Code §22-3-6-1(b)(6).

Because an independent contractor is not an employee, independent contractors are also excluded from coverage under the Act. In determining whether a particular individual is an independent contractor, the Worker's Compensation Board will look to the nature and duration of the services provided to the employer, as well as the extent to which the independent contractor can actually be said to have been maintaining his own business. The parties' belief that an employee-employer relationship exists will also be considered. Where an independent contractor performs services exclusively or primarily for a single customer, and has little or no capital investment in his independent contracting business (no separate office, no significant equipment, etc.), the Worker's Compensation Board will generally conclude that the individual is an employee of the recipient of the services, and not an independent contractor. In the simplest cases, such as hiring someone to mow

a lawn or do painting work, the decision regarding independent contractor or employee status usually turns on who provided the tools, equipment or supplies: if the worker provided them, he will probably be considered an independent contractor; if the employer provided them, the worker may be considered by the Board to be an employee.

Employers subject to the Act are required to post a notice in their place of business informing employees about worker's compensation. A sample notice is enclosed. The notice must be posted in a conspicuous location at the employer's place of business which gives reasonable notice to all employees. An employer who fails to comply is subject to a civil penalty of $50.00.

II. THE WORKER'S COMPENSATION BOARD

A. Composition

The Worker's Compensation Board of Indiana, formerly known as the Industrial Board of Indiana, is composed of a Chairperson and six Hearing Members appointed by the Governor. Each Hearing Member hears and decides disputed cases between employees and employers within a particular geographic district.

Representatives of the Worker's Compensation Board attempt to resolve certain disputes through informal contacts between employees and employers or, more commonly, the worker's compensation insurance carriers. They also oversee the selection of independent medical examiners under the procedure for termination of temporary total disability benefits set forth in Indiana Code §22-3-3-7.

B. Procedure

When an employee's injury is reported to the employer, the employer and, if applicable, its carrier, are required to prepare and file a *First Report of Employee Injury/Illness (State Form 34401)*. Where a dispute arises between the injured employee and the employer or its carrier, the employee must file an *Application for Adjustment of Claim* with the Board to litigate the dispute. Filing of the *Application* will result in the case being assigned to a Hearing Member. Some Hearing Members hold periodic pre-trial conferences to monitor the progress of cases.

Although the Act contemplates that cases will be scheduled for hearing in the county of injury, the Hearing Members consolidate cases from several counties into regional hearing locations. The Hearing Members generally prefer to hear a case only when all issues are ready for determination. Consequently, continuances are common.

If the case is not settled, the Hearing Member will conduct a hearing at which the parties may present evidence. The Hearing Member will take the matter under consideration and will eventually issue a written decision.

A party adversely affected by the Hearing Member's decision may request that the Full Worker's Compensation Board review that decision by filing an *Application for Review by the Full Board* within 30 days of the issue date of the decision. Ind. Code §22-3-4-7. The Full Board is comprised of all six Hearing Members and the Chairperson.

Although the Full Board hearing is a *de novo* hearing, the Full Board usually does not allow new or additional evidence to be introduced. 631 Ind. Admin. Code §1-1-18. Instead, the Full Board hears argument from each party's counsel. To preserve issues for appellate review, a party must raise those issues before the Full Board. A party dissatisfied with the Full Board's decision must initiate an appeal to the Indiana Court of Appeals within 30 days of the Full Board's decision by filing a notice of appeal. At that point, the appeal is fully governed by the Indiana Rules of Appellate Procedure.

C. Rules of the Board

The rules governing the Worker's Compensation Board appear in 631 Indiana Administrative Code §§1-1-2 through 33. The rules reflect the Board's preference for the expeditious presentation of evidence at hearings. For example, the Board encourages the parties to prepare written stipulations and to submit evidence by deposition. 631 Ind. Admin. Code §§1-1-11, 12. The Board has also adopted Trial Rules 26 through 37 of the Indiana Rules of Trial Procedure which govern discovery. 631 Ind. Admin. Code §1-1-3.

D. Jurisdiction and Multi-State Claims

The Indiana Act has perhaps the broadest geographic coverage of any Worker's Compensation Act in the United States. If an "Indiana employment" is involved, the Board asserts jurisdiction over claims for injuries arising in other states and even foreign countries. Ind. Code §22-3-2-20. For example, an employee of an Indiana trucking company injured out of state may be awarded Indiana benefits, as long as it was "anticipated" that the employee would perform services in Indiana. The receipt of Indiana benefits does not prevent the employee from seeking benefits (usually higher) in another state, which may also assert its jurisdiction. Whether another state's worker's compensation act applies may depend on its particular statutory requirements. A few even deny coverage to employees who have received benefits under another state's system. Generally, the government agency administering a state's worker's compensation act has a sufficient interest over a claim where one or more of the following circumstances involve that state:

1. The place where the injury occurred;
2. The place where the employment contract was made;
3. The place where the employment relation existed;
4. The place where the employer is located;
5. The place where the employee resides; and
6. The state whose compensation act the parties adopted by contract.

Another state may not necessarily honor an employment agreement under which the employee agreed to accept Indiana benefits to the exclusion of benefits from other states. Cases involving multi-state claims require a careful analysis of the worker's compensation acts of the states involved.

III. COVERED INJURIES

To claim benefits under the Act, an employee or his dependents must establish that the employee sustained personal injury or death "by accident arising out of and in the course of the employment." Ind. Code §22-3-2-2.

A. By Accident

The Indiana Supreme Court has held that an employee would be considered to have sustained an injury "by accident" as long as the injury was the unexpected result of performing the work duties. *Evans v. Yankeetown Dock Corp.*, 491 N.E.2d 969 (Ind. 1986). Thus, an employee who sustains a back injury while unloading a truck might be deemed to have sustained an injury by accident, even though no unusual or unexpected event had precipitated his injury. It is not necessary that the employee show some specific incident caused the employee's injury; rather, it is sufficient to show that the employee's work activities over an extended period of time ultimately caused the injury. The Indiana courts have confirmed that where a particular injury is expected (*e.g.*, the employee expected to have sore muscles after beginning a new job), his injuries might not be considered to have occurred "by accident," and benefits under the Act may be denied.

B. Arising Out of and in the Course of the Employment

The Indiana courts have held that the phrase "in the course of" requires that the injury arose during the period of the employment, and that the phrase "arising out of" requires that the injury was caused by the employment. For example, it should not be sufficient for the employee to show that he first noticed symptoms of his condition (such as arthritis or a ruptured disc) while he was at work. Instead, the employee should be required to demonstrate that his work activities actually caused the particular condition.

Many of the cases dealing with the course of employment look to the nature of the activities performed by the employee and the employer's control over the location of and means for performance of those activities. As a general rule, the Indiana Worker's Compensation Board has held that an injury which occurs while an employee is traveling to or from work does not arise out of or in the course of the employee's employment. However, exceptions have been recognized in cases where: (1) the employee is being compensated for his travel time; (2) the employee is required to use his vehicle in connection with his work; or (3) the employee does not have a fixed place of employment. In addition, Indiana appellate courts have held that an employer has a duty to provide its employees with safe ingress and egress to and from the work place, such that injuries occurring on entrance ways, sidewalks, or parking lots under the employer's control may be compensable unless the risk of injury was solely personal or idiosyncratic.

IV. COMPENSATION TERMS

In addition to benefits for death, Indiana recognizes the following:

A. Temporary Total Disability (TTD)

The term temporary total disability refers to the period when the employee has a complete but temporary inability to work in his former position, or in a position of the same kind or character. An employee is generally entitled to receive temporary total disability benefits until the earlier of the time at which: (a) his condition has reached maximum medical improvement (*i.e.*, it is permanent and quiescent), (b) he is able to resume employment of the same kind or character or actually resumes some employment, or (c) the employee's temporary total disability becomes a temporary partial disability (see below). Subject to the rules concerning termination of temporary total disability benefits, once an employee's condition reaches a permanent and quiescent state, temporary total

disability benefits cease, regardless of the employee's actual ability to resume his former position, or his ability to secure some alternate form of employment.

B. Temporary Partial Disability (TPD)

A temporary partial disability exists where an employee's condition is not yet permanent and quiescent and he is unable to resume the former position or a position of a like kind or character, but he is nonetheless able to return to some less strenuous position, usually at a lower rate of pay or at reduced hours. An injured employee's refusal to accept suitable employment will disqualify him from receiving further benefits until the refusal ends, assuming proper notice of the suspension of benefits is served upon the employee.

C. Permanent Partial Impairment (PPI)

The term permanent partial impairment refers solely to an employee's permanent loss of function attributable to the injury. Permanent partial impairment is unrelated to the employee's reduction of earning capacity or his employability. The existence and extent of an employee's permanent partial impairment cannot be determined until his condition has become permanent and quiescent and, most often, will be based on medical opinion.

D. Permanent Total Disability (PTD)

The Act uses both "total permanent disability" and "permanent total disability" as the same concept. We typically refer to it as "permanent total disability" to distinguish its initials ("PTD") from those for temporary partial disability ("TPD").

An employee has sustained a permanent total disability where the injury leaves him unable to engage in reasonable types of employment for the remainder of his lifetime. In assessing the employee's ability to engage in reasonable types of employment, the Worker's Compensation Board will look at the extent of the employee's injury, education, previous training and work experience, and the actual availability of employment for persons with similar limitations.

E. Medical Expenses and Examination

The Indiana Worker's Compensation Act also requires an employer to bear the medical expenses associated with the treatment of the employee's injury. Additionally, the employer must pay the injured employee for work time lost due to authorized treatment or examination using the employee's average daily wage, if the examination causes any loss of working time. Ind. Code §22-3-3-6(b). There is no maximum dollar limitation on the employer's liability for medical expenses, although a type of "reasonable and customary" limitation is applied with respect to specific charges.

V. SECOND INJURY FUND

Absent special provision under the Indiana Worker's Compensation Act, employers would be reluctant to employ individuals with existing disabilities for fear that a subsequent injury to the employee might render the employer liable for permanent total disability benefits. To encourage the employment of partially disabled individuals, the Indiana Worker's Compensation Act created the Second Injury Fund. In any case where, prior to the employment with the employer, an employee

has been totally deprived of the use of an eye, a hand, a foot, or an entire limb and the employee subsequently sustains a work injury which renders the employee permanently totally disabled, the employer is liable only for the benefits payable with respect to the second injury, calculated as if the employee had not been suffering from the preexisting injury. The balance of the permanent total disability benefits are then paid from the state-maintained Second Injury Fund. Ind. Code §22-3-3-13. An employee is also permitted to make application to the Second Injury Fund when the employee exhausts the maximum benefits available to him or her under the general provisions of the Act, and the employee can establish that he remains permanently totally disabled. The Second Injury Fund also pays for the replacement or repair of artificial members initially provided by the employer for work injuries. Every insurance carrier and self-insured employer is required to contribute to the Second Injury Fund.

VI. SPECIAL PROBLEM AREAS

A. Aggravation of a Pre-Existing Injury

The rule is well established in Indiana that an employer takes its employees as it finds them, with whatever latent weaknesses they may possess. Where a work injury aggravates a dormant or asymptomatic pre-existing condition, the employer is liable for the full extent of the injury. The fact that a "normal" employee would not have been injured in the same circumstances does not provide a defense.

However, it should be noted that the aggravation of a pre-existing latent condition is not the same as the aggravation of an existing impairment or disability. Where the employee's condition was symptomatic before the aggravation, an impairment or disability was likely present. The employer may be able to avoid liability by showing that the work caused no additional injury. If any additional injury can be identified and attributed to the work, the employer may be only liable for that additional injury (or "aggravation"). For instance, if an employee has previously been awarded benefits based on a 15% permanent partial impairment of his leg, and he sustains a subsequent injury in the course of his employment which increases that impairment to 20% of his leg, benefits for the subsequent injury are based only on the additional 5% impairment of his leg.

B. Complications

Indiana law is also clear that an employer is responsible for all of the consequences and complications which result from a work injury. This includes infections, allergic reactions, and even malpractice committed by the treating physician. An injury subsequent to the work injury may break the causal connection and relieve the employer of liability if the subsequent injury was not the natural result of the original injury.

C. Falls

Falls resulting from risks personal to the employee, commonly called "idiopathic falls," are not compensable under the Worker's Compensation Act. *Kovatch v. A.M. General,* 679 N.E.2d 940 (Ind. Ct. App. 1997). An exception to this general rule occurs when an injury results from an idiopathic fall and the employment increased the dangerous effects of the fall—such as placing the employee at a height, near machinery or sharp corners, or in a moving vehicle.

Unexplained falls which result in injuries may be considered a neutral risk, one neither distinctly personal to the employee nor distinctly associated with employment. In *Milledge v. The Oaks,* 784 N.E.2d 926 (Ind. 2003), the Indiana Supreme Court clarified that accidents associated with neutral risks are considered compensable in Indiana. *Milledge* applied the "positional risk doctrine" to unexplained falls. Under the positional risk doctrine, a fall due to a neutral risk arises out of the injured worker's employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed the employee in the position where he was injured. Three years after *Milledge*, the Indiana General Assembly amended Indiana Code § 23-3-2-2. "That amendment overrule[d] *Milledge's* positional risk doctrine . . . by keeping the burden of proof on the employees throughout the proceedings." *A Plus Home Health Care Inc. v. Miecznikowski*, 983 N.E.2d 140, 143 (Ind. Ct. App. 2012). Pursuant to Ind. Code § 23-3-2-2, a fall due to a neutral risk may be compensable, but the employee maintains the burden of proof to demonstrate that the injury arose out of and in the course of the employee's employment, and that the fall was not due to a personal risk such as a pre-existing illness or condition unrelated to employment.

D. Psychological Disorders (Stress)

The Indiana Supreme Court has concluded that psychological disorders or injuries are compensable even in the absence of any contemporaneous physical injury. *Hansen v. Von Duprin, Inc.*, 507 N.E.2d 573 (Ind. 1987). Even more significantly, the Indiana Supreme Court held that a psychological disorder would be compensable as long as it resulted from the employee's employment, irrespective of whether the employee had been subjected to any unusual emotional or psychological stress. Taken literally, this would seem to mean that an employee who is distraught over an unsatisfactory job review could receive worker's compensation benefits if he could find a physician to release him from work for some period of time. However, the Worker's Compensation Board usually regards purely psychological injuries with skepticism and requires evidence showing that the incident rises to the level of an "accidental injury." Disappointment over personnel actions, or personality conflicts with co-workers usually do not provide the basis for a stress claim award. More recent appellate cases have held that an emotional injury, such as humiliation, tension, or embarrassment, is not a personal injury within the meaning of the Act unless it causes disability or impairment.

E. Repetitive or Cumulative Trauma

Employees have 30 days to provide written notice of injury or death, unless the employer had actual knowledge of the injury or death. The employer's liability for compensation benefits under the Act begins once notice of the employee's injury or death is received. However, lack of notice does not automatically relieve the employer from paying benefits. Usually, the employer must show that it was prejudiced by the failure to give notice, and after notice is received the employer may have to begin providing benefits.

Some confusion arises when the employee reports a "progressive" injury. The date of the injury for the purpose of giving notice (and for the statute of limitations) is the date the injury becomes "discernible." That date may mean when a qualified medical provider makes a diagnosis of cumulative trauma or when the employee first misses work due to the condition and relates it to his job activities.

Although carpal tunnel syndrome cases and other types of "repetitive or cumulative trauma" cases have been the subject of much discussion, it seems clear that the ultimate question will be

whether the condition was caused by the employee's work activities. If so, compensation will be awarded. The determination of whether these types of injuries are the result of the employee's work activities will necessitate investigation regarding the employee's duties with previous employers, as well as the employee's personal activities and hobbies. In addition, expert medical testimony will be required.

An employer is not responsible for medical expenses of any injury for which it had no notice or the opportunity to tender medical care. There are a few exceptions. If treatment was given on an emergency basis, because the employer refused to tender medical treatment, or for other good cause, then the employer may be responsible.

F. Willful Acts

Employees have from time to time contended that their injuries resulted from the willful acts of the employer or the employer's supervisory personnel, such that the employee should be permitted to sue the employer in a civil action, rather than being limited to the remedies available under the Indiana Worker's Compensation Act. The test applied in these cases has been whether the employer (those in control at the company or corporation) actually intended to cause injury to the employee. Applying this test, the Indiana Worker's Compensation Board and the courts have been reluctant to find that any such injury was specifically intended, even where the employer's conduct had recklessly endangered the employee. Even in instances where one employee clearly intended to injure another, the courts have limited the injured employee's remedies against the employer to the remedies available under the Indiana Worker's Compensation Act, although they have permitted a civil action to be maintained by the injured employee against the aggressor employee because the latter acted outside the scope of the employment.

G. Terminology

Many physicians are unfamiliar with the specific terminology used in the Act. As a result, the terminology is often misused in their reports. For example, it is clear in Indiana that a permanent partial impairment rating cannot be rendered until the employee's condition has reached a permanent and quiescent state. Nonetheless, it is not unusual to receive a report from a physician specifying a permanent partial impairment rating while stating in the same report that the employee is scheduled for her next visit in two weeks. The burden is on the employer and its insurance carrier to ensure that the physician understands the terminology, and uses it correctly. An insurer was held liable for punitive damages in a civil action where it discontinued temporary total disability benefits based upon the existence of a permanent partial impairment rating, where the insurer knew that the employee was still undergoing treatment and had not reached maximum medical improvement. *Stump v. Commercial Union*, 601 N.E.2d 327 (Ind. 1992).

H. Contractor's Certificate of Compliance

In certain situations, a person, company, general contractor, or governmental unit can become secondarily liable for payment of worker's compensation benefits to the employee of an independent contractor. The term "person" does not include an owner of a personal residence who contracts for work on the owner occupied personal residence. Ind. Code §22-3-2-14(a). An entity contracting for the performance of work exceeding $1,000.00 in value by a contractor becomes secondarily liable for

injuries to an employee of that contractor, unless the person or company obtained from the contractor a certificate of compliance issued by the Board showing that the contractor has complied with the Indiana Worker's Compensation Act. Ind. Code §22-3-2-14. Similarly, a contractor who hires a subcontractor without obtaining a certificate of compliance may become secondarily liable for the benefits owed to an injured employee of the subcontractor where the accident occurs during the performance of the work covered by the subcontract. Ind. Code §22-3-2-14. The file-stamped certificate of compliance must come from the Worker's Compensation Board. A certificate of insurance issued by the contractor's insurance carrier or agent is not sufficient to relieve secondary liability. Any general contractor or company held secondarily liable may pursue an action against the contractor or subcontractor who did not have proper insurance or documentation. The employer of the injured employee remains primarily liable for benefits payable to that employee.

Under Ind. Code §22-3-2-14.5, a person hiring the contractor is held harmless for injuries to the contractor or the contractor's employees after confirming the contractor's exempt status. The statute appears to be designed to protect contractors and subcontractors from unexpectedly being held liable as a construction worker's employer. It does not purport to make any person hiring a contractor without employees liable for that contractor's own injuries.

VII. OCCUPATIONAL DISEASES ACT

Although similar to the Worker's Compensation Act in many respects, the Indiana Occupational Diseases Act features some important differences. An occupational disease is defined as:

> A disease arising out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

Ind. Code §22-3-7-10(a). There is no requirement that the occupational disease be contracted "by accident." An occupational disease arises out of the employment where there is a direct causal link between the disease and the conditions under which the work was performed, such that the disease may be regarded as having naturally resulted from the exposure. *Baker v. Westinghouse Electric Corp.,* 637 N.E.2d 1271 (Ind. 1994). In many cases, it is difficult for the employee to establish a causal connection between his or her disease, such as bronchitis, and a particular irritant in the work environment.

Another significant difference involves the definition of "disability." To recover disability benefits or to secure payment of medical expenses under the Occupational Diseases Act, an employee must establish that he suffers from an occupational disease that resulted in "disablement." Disablement refers to the state of being unable to earn full wages at the work the employee performed when last exposed to the hazardous condition or full wages in other suitable employment. *Spaulding v. International Bakers Serv.,* 550 N.E.2d 307 (Ind. 1990). Consequently, an employee who has an allergic reaction to an irritant may not be able to establish disablement, if that employee could earn equal wages for another employer where that irritant would not be present. Disability exists as long as the person is unable to earn equal wages in the person's work or in work for another employer.

Another difference between the Acts involves the statute of limitations. Under the Occupational Diseases Act, an employee must file an application with the Board within two years after the date of disablement (not the date of the accident as under the Worker's Compensation Act). Where the employee has died from an alleged occupational disease, the statutory dependents must file an application with the Board within two years after the date of the employee's death. In addition, an employee is conclusively deemed to have been exposed to the hazards of an occupational disease where he has been employed for any length of time in an occupation or process in which the hazard of that disease exists. The employer liable for the compensation is the employer in whose employment the employee was last exposed to the hazards of the occupational disease claimed regardless of the length of time of the last exposure. However, in cases involving silicosis or asbestosis, the only employer liable is the last employer in whose employment the employee was exposed during a period of 60 days or more to the hazard of the occupational disease. The insurance carrier liable is the carrier whose policy was in effect covering the employer liable on the last day of exposure rendering the employer liable. Ind. Code §22-3-7-33.

BENEFITS UNDER THE ACT

Assuming an employee has a compensable illness or injury under the Indiana Worker's Compensation Act, he may be entitled to several different types of benefits including:

1. Medical services;
2. Temporary total disability and/or temporary partial disability benefits;
3. Permanent total disability benefits;
4. Permanent partial impairment benefits;
5. Death benefits;
6. Attorneys' fees or damages for bad faith conduct.

I. MEDICAL SERVICES

Indiana Code §22-3-3-4

A. General Obligation

Indiana Code §22-3-3-4 provides that after an injury and prior to an adjudication of permanent impairment, the employer shall furnish to the employee an attending physician for the treatment of his injuries, and such surgical, hospital and nursing services and supplies as the physician or the Worker's Compensation Board may deem necessary. The employee is not free to elect at the employer's expense additional treatment from physicians other than those tendered by the employer. The employee may make such an election only if there is an emergency, the employer has failed to provide services deemed necessary, or any other "good reason" exists. The employer will be required to pay the reasonable costs of those services and supplies. Ind. Code §22-3-3-4(d). The Board has the authority to withhold approval of fees for medical services of the attending physician until that physician files a report with the Board. Ind. Code §22-3-3-5.

An employer may be required to pay compensable medical expenses even if those expenses have been paid by another source such as group health insurance. *See, e.g.*, *Sears Roebuck & Co. v. Murphy*, 508 N.E.2d 825 (Ind. Ct. App. 1987). However, in settlement of claims, employees sometimes waive their right to be reimbursed for medical expenses which have already been paid by other insurance. This assumes, of course, that the health insurance carrier has not asserted a lien in the proceedings. If medical expenses are inadvertently paid on a disputed claim, it is difficult to recover payments if the treatment was authorized.

The employer must reimburse the employee for wages lost for treatment and travel to authorized medical care if the employee loses work time. Ind. Code §22-3-3-4(a). For accidents which result in loss or damage to an artificial member, brace, an implant, eyeglasses, prosthodontics, or other medically prescribed device, the employer must repair the damaged device or provide a reasonably equivalent replacement. Employers remain responsible for providing a prosthetic or medically prescribed device made necessary by the injury. However, replacement of a prosthetic device necessitated by normal

wear and tear is not the employer's obligation. The employee can apply to the Second Injury Fund for replacement costs.

B. Duration

Reasonable authorized and necessary expenses are payable during the employee's disability. After the employee reaches a permanent and quiescent state, the obligation to pay medical expenses becomes more limited. At that point, the employer is only obligated to pay those medical expenses which are necessary to limit or reduce the extent of impairment. Ind. Code §22-3-3-4.

In Indiana it is possible for the Board to award future medical services. *Talas v. Correct Piping Co., Inc.*, 435 N.E.2d 22 (Ind. 1982); *Bloomington Hospital v. Stofko,* 705 N.E.2d 515 (Ind. Ct. App. 1999) (occupational disease case). Furthermore, even if the Board does not award future medical services, an employee can seek modification of previous awards by the Board to attain further medical services as long as the employee does so within two years from the last date for which compensation was paid under any award. Ind. Code §22-3-3-27.

The employer may also discontinue paying medical expenses if the employee refuses medical treatment tendered by the employer. Ind. Code §22-3-3-4(c). Before discontinuing payment, the employee must be served with Form 38911, a Board notice setting forth the consequences of the refusal.

C. Independent Medical Examinations ("IME")

The Board is authorized to: 1) establish and maintain a list of independent medical examiners; 2) create and undertake a program designed to educate and to provide assistance to employees and employers regarding the rights and remedies under the Act; 3) provide for informal resolution of disputes; and 4) assess and collect, on the Board's own initiative or on the motion of a party, the penalties provided under the Act.

An independent medical examination (IME) may be appointed if the employer and employee disagree as to the employee's readiness to return to work after an injury and no automatic basis for formulating temporary total disability exists. The Board IME process is used only to determine whether the employee remains disabled and requires more treatment and is at the employer's expense. The process is not to be used to resolve other types of disputes, such as a disagreement over a permanent partial impairment rating. Ind. Code §22-3-3-7 (c); Ind. Code §22-3-4-11. However, some Hearing Members will order an IME (at the employer's expense) when the only issue is a difference of medical opinions over ratings.

After an employee is determined to be at maximum medical improvement, he is entitled to notification by the employer via Form 38911 that his benefits are being terminated because his injury has reached a permanent and quiescent state. If the employee is represented by counsel, the Board takes the position that the Form 38911 should be sent to the employee's attorney. If the employee disagrees with the proposed termination, the employee can use the Form 38911 to request an IME.

The Form must be mailed by the employee to the Board within seven days of the receipt by the employee to obtain an IME. Ind. Code §22-3-3-7 (c).

The physician conducting the IME will be chosen from a list of specialists maintained by the Board. The Board usually orders the employer/insurance carrier to provide two weeks of TTD payments to the employee and pay for the IME. The independent medical examiner will be asked to provide a written opinion as to the employee's condition. Based on the IME findings, the Board will notify the parties whether the employee is determined to be able to return to work or should receive continued disability payments and receive more treatment. If the employee is able to return to work or requires no further treatment, the employer is entitled to credit for the two weeks of temporary total disability benefits it was required to pay at the time the IME was scheduled. If the employee is determined unable to return to work and requires additional treatment, the employee's temporary total disability payments should be brought present from the date of termination and continued until the employee is determined to be at maximum medical improvement, unless the employer challenges the opinion.

If either party objects to the independent medical evaluator's opinion, a hearing may be requested before the Board. The Board takes the position that an objection to the IME report must be filed within 15 days of receipt of the report. Because IME's are frequently requested for reasons not authorized by statute, the employer can file an objection with the Board prior to the scheduling of the examination so that the issue can be addressed before the Hearing Member.

Hearing Members have the authority to order an IME at the employer's expense whenever there is a dispute of opinions among the various physicians (usually the authorized treating physician and a physician chosen by the employee's attorney). Ind. Code §22-3-4-11. The Hearing Member may refuse to hear the case until the "discretionary IME" is conducted.

D. Mileage Fee for Traveling To and From Examinations

Ind. Code §22-3-3-6(b) requires that an employer requesting an examination of any employee residing within Indiana shall pay, in advance of the time fixed for the examination, sufficient money to defray the necessary expenses of travel by the most convenient means to and from the place of examination, and the cost of meals and lodging necessary during the travel. If the method of travel is by automobile, the mileage rate to be paid by the employer shall be the rate currently being paid by the state to its employees at that time. (As of February 2019, the state rate was $.38 per mile.) If the examination causes the employee to lose working time, the employer must reimburse the employee for the loss of wages – at the employee's "average daily wage" (the regular hourly rate, not the TTD rate) for all time lost. Ind. Code §22-3-3-6(b). When any employee injured in Indiana moves outside Indiana, the travel expense and the cost of meals and lodging necessary during the travel payable must be paid from the point in Indiana nearest to the employee's then residence to the place of examination. No travel and other expense shall be paid for any travel and other expense required outside Indiana.

E. Nurse Case Managers ("NCM")

Insurance carriers and third party administrators often utilize the services of a nurse case manager ("NCM") to assist both the adjuster and the employee through the maze of medical care. Some plaintiffs' attorneys try to limit the contact that the NCM may have with the employee and/or the health care providers. The Board generally attempts to accommodate such imposed restrictions by keeping the NCM out of the examination room during examinations, but does not prohibit the NCM from conversing with the providers after the examinations.

A more hotly contested issue, however, is whether the notes and reports of the NCM are discoverable and must be produced to the plaintiff's attorney. We argue that any correspondence between the NCM and the employee as well as any correspondence between the NCM and the provider are properly discoverable. We have successfully taken the position that correspondence between the NCM and the adjuster or the employer's attorney are privileged from production under a work product doctrine or attorney-client privilege. However, that argument may not always be accepted by the Hearing Members. Consequently, all NCMs should be advised to expect that their notes and correspondence may become discoverable and they should refrain from making statements that are not justified or may be harmful or embarrassing if produced to the plaintiff's attorney. Particularly sensitive are statements of how much money the NCM has saved the employer.

II. TEMPORARY TOTAL DISABILITY BENEFITS

Indiana Code §22-3-3-7

A. Commencement of Temporary Total Disability Benefits

Indiana Code §22-3-3-7 provides that temporary total disability or temporary partial disability shall begin with the eighth day of such disability and that compensation shall be allowed for the first seven calendar days (the "waiting period") only if the disability continues for longer than 21 days. The days of disability need not be continuous for benefits to become payable.

The first weekly installment of temporary disability benefits is due 14 days after the disability begins. The employer or its insurance carrier must provide the employee or the employee's dependents a compensation agreement on the Board's form not later than 15 days from the date that the first installment of compensation is due. If the employer denies liability, the employer must inform the Board and the employee or the employee's dependents. Notice of denial must be in writing and mailed not later than 30 days after the employer's knowledge of the injury. The employer is subject to a civil penalty of $50.00 for failure to comply with this section. The Board may waive the penalty if the employer establishes that a delay of not more than 30 days was caused by an inability to obtain medical information necessary to determine the employer's liability. Upon timely written request, the Board may grant an additional 30 days where a determination of liability cannot be made in the initial 30-day period. Extensions beyond the first 60 days must be based on "extraordinary circumstances."

B. Computation of Temporary Total Disability Benefits

Indiana Code §22-3-3-8 provides the formulas for computing temporary total disability benefits. The employee is entitled to 66 2/3% of his average weekly wage for a period not to exceed 500 weeks.

Indiana Code §22-3-6-1 provides that average weekly wage means earnings of the injured employee in the employment in which the employee was working at the time of the injury during the 52-week period immediately preceding the date of the injury divided by 52. If the employee was not employed for the entire 52 weeks or lost seven or more calendar days during the period, Indiana Code §22-3-6-1 provides directions for computing the employee's average weekly wage. If the employee lost seven or more calendar days during the period, the average weekly wage is determined by taking his earnings for the remainder of this 52 weeks and dividing that amount by the number of weeks and parts thereof remaining after the time lost is deducted. If the employee was not employed for 52 weeks, then his average weekly wage is his total wages earned during the period worked divided by the number of weeks worked, if the determination is fair to both parties. Furthermore, if the time worked by the employee is short and it is difficult to compute the average weekly wage, regard is given to the average weekly amount earned by a person in the same position with the same employer for 52 weeks prior to the injury.

In calculating average weekly wages, wages earned by the injured employee from separate and concurrent employment will not be considered, unless the duties of the other employment are "similar." *LeFort v. Miller's Merry Manor, Inc.,* 572 N.E.2d 1330, 1331 (Ind. Ct. App. 1991); *see also Sprout & Davis, Inc. v. Toren,* 78 N.E.2d 437 (Ind. Ct. App. 1948) ("where an employee is working at the same time[,] in the same grade or kind of work for different employers under separate and distinct concurrent contracts of hire[,] his total earnings from all of such employers is to be considered in determining his average weekly wages"). Thus, if an injured employee is working separate but "similar" jobs at the time of the work-related injury, all of the injured employee's wages should be used to calculate the employee's average weekly wages.

Indiana Code §22-3-3-22 provides further limitations for the average weekly wage which will be used in computing temporary total disability benefits, temporary partial disability benefits, and permanent total disability benefits. Those limitations are maximums and minimums and are dependent on when the injury occurred. Additionally, if the minimum benefit (66 2/3% of the minimum average weekly wage) is more than the employee's actual average weekly wage, then the actual weekly wage is multiplied by the number of weeks of disability to arrive at temporary total disability benefits.

For example, if an employee was temporarily totally disabled for five weeks by an injury occurring on July 5, 2010 and his average weekly wage as defined by Indiana Code §22-3-6-1 was $1,000.00, he would be entitled to 66 2/3% of $975.00 (the maximum average weekly wage) (which equals $650.00) times 5 weeks, or $3,250.00. However, if his average weekly wage was $50.00, he would be entitled to 5 times $50.00, or $250.00.

C. Termination of Temporary Total Disability Benefits

Indiana Code §22-3-3-7 establishes criteria for the termination of temporary total disability benefits. Once begun, temporary total disability benefits may be terminated automatically by the employer only if:

1. The employee has returned to any employment;

2. The employee has died;

3. The employee has refused to undergo a medical examination;

4. The employee has refused to accept suitable employment (usually light duty) under Indiana Code §22-3-3-11;

5. The employee has received 500 weeks of temporary total disability benefits or has been paid the maximum compensation allowed; or

6. The employee is unable or unavailable to work for reasons unrelated to the compensable injury.

This section also establishes the process for terminating benefits and handling disputes regarding termination. In all cases other than the above (such as when the employee reaches "maximum medical improvement"), an employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits and of the availability of employment, if any, on the Board's Form 38911. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the Board and employer within 7 days after receiving notice of intent to terminate benefits. Temporary total disability benefits may be terminated if the Board and employer do not receive a notice of disagreement. Upon receiving a notice of disagreement, the Board is required to attempt to resolve the disagreement. If unable to do so within 10 days upon receipt of the notice of disagreement, the Board must arrange immediately for evaluation of the employee by an independent medical examiner. The examiner is selected by mutual agreement of the parties, or, if the parties are unable to agree, appointed by the Board. Temporary total disability benefits may then be terminated if: 1) the independent medical examiner determines that the employee requires no further medical treatment or is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available; or 2) the employee fails or refuses to appear for the examination. If either party disagrees with the independent medical examiner's opinion, that party may apply for a hearing.

An employer is not required to continue paying temporary total disability benefits for more than 14 days after the proposed termination unless the independent medical examiner has determined that the employee requires further medical treatment and is temporarily disabled and unable to return to any available employment. If temporary total disability benefits are overpaid, the overpayment may be deducted from any benefits due the employee under Indiana Code §22-3-3-10 (permanent partial

impairment). The employee is responsible for paying any overpayment which cannot be deducted from benefits due. Ind. Code §22-3-3-7(e).

D. Temporary Total Disability Credit

Although the statutes governing temporary total disability benefits provide a maximum benefit of 500 weeks, the employer is entitled to credit for each dollar of temporary total disability benefits paid beyond 125 weeks for accidents occurring after July 1, 1991, which amount will be credited towards any amount due for permanent partial impairment. Ind. Code §22-3-3-10. This credit does not allow the employer to terminate the temporary total disability benefits after 125 weeks, but merely allows the employer to deduct the amount of temporary total disability benefits paid beyond the 125 weeks from permanent partial impairment benefits which are due.

III. TEMPORARY PARTIAL DISABILITY BENEFITS

Indiana Code §22-3-3-9

Indiana Code §22-3-3-9 provides that temporary partial disability benefits will be paid for an amount equal to 66 2/3% of the difference between the employee's average weekly wage before the injury and the weekly wage at which he returned to work thereafter. The maximum and minimum average weekly wage for determining temporary partial disability is governed by Indiana Code §22-3-3-22 and is therefore the same as the maximum and minimum used in determining temporary total disability.

A. Eligibility for Benefits

Several different circumstances may arise that will require an employer to determine whether temporary partial disability compensation is payable:

1. If post-injury earnings are greater than pre-injury earnings, no temporary partial disability compensation is payable.

2. If post-injury earnings are the same as pre-injury earnings, no temporary partial disability compensation is payable.

3. If post-injury earnings are less than pre-injury earnings but more than the statutory maximum average weekly wage as fixed by Indiana Code §22-3-3-22, no temporary partial disability compensation is payable.

4. If post-injury earnings are less than pre-injury earnings and are less than the statutory maximum amount fixed by Indiana Code §22-3-3-22, the employee may be entitled to compensation.

To calculate the amount of compensation, the weekly wage of the post-injury temporary position is subtracted from the average weekly wage before the injury; the benefit payable will be 66 2/3% of this amount. If the employee's pre-injury wage is in excess of the statutory maximum defined by Indiana Code §22-3-3-22, then use the applicable statutory maximum as the employee's average weekly wage. Do not use the actual average weekly wage if it exceeds the applicable statutory maximum.

Here are some examples to clarify the process using a date of injury of July 5, 2018 with the statutory maximum weekly wage set at $1,170.00:

1. If the employee's average weekly wage was $600.00 prior to the accident and his weekly wage was $700.00 afterward, there would be no temporary partial disability compensation payable.

2. If the employee's average weekly wage was $1,200.00 prior to the accident and the weekly wage afterward was $1,170.00, there would be no temporary partial disability compensation due (because the statutory average weekly wage maximum was $1,170.00).

3. If the employee's average weekly wage was $1,200.00 prior to the accident and the weekly wage afterward was $500.00, the employee would be entitled to temporary partial disability based on a weekly wage figure of $1,170.00, because the actual average weekly wage was greater than the statutory maximum. The employee would be entitled to 66 2/3% of the difference between the average weekly wage "maximum" and actual pay rate, i.e., 66 2/3% of the difference between $1,170.00 and $500.00. This results in temporary partial disability benefits of $446.67 calculated as follows: $1,170.00 - $500.00 = $670.00; $670.00 x 66 2/3% = $446.67 per week.

4. If an employee's average weekly wage was $500.00 before his accident and the average weekly wage was $300.00 afterward, he is eligible for $133.34 per week; i.e., $500.00 - $300.00 = $200.00 x 66 2/3% = $133.34 per week.

B. Termination of Benefits

Temporary partial disability benefits will end if:

1. The employee returns to the same average weekly wage he was making at the time of the injury;

2. The injury becomes permanent and quiescent; or

3. The employee has received temporary partial disability benefits for 300 weeks including the time which any temporary total disability benefits were received.

If an employer offers light duty work to an employee within the restrictions placed on the employee by a physician, and the employee unreasonably refuses that light duty work, the employee will be barred from receiving any compensation during the refusal period. The employer must give notice (Form 38911) to the employee explaining the effect of his refusal to accept the light duty work. The employer must also provide written notice of benefit termination when the employee's condition reaches a permanent and quiescent state. Using Form 38911 gives the employee the opportunity to request a Board IME if he disputes the release.

IV. TOTAL PERMANENT DISABILITY BENEFITS

Indiana Code §22-3-3-10

A. Computation of Benefits

Indiana Code §22-3-3-10(i)(11) provides that the employee shall receive total permanent disability benefits based on the same rate as his temporary total disability benefits (66 2/3% of average weekly wage, subject to statutory maximum). (The Act uses both "total permanent disability" and "permanent total disability" as the same concept. We typically refer to it as "permanent total disability" to distinguish its initials ("PTD") from those form temporary partial disability ("TPD")).

Indiana Code §22-3-3-10 provides for 500 weeks of benefits for total permanent disability. In *Lowell Health Care Center v. Jordan*, 641 N.E.2d 675 (Ind. Ct. App. 1994), the Indiana Court of Appeals determined that an employee was entitled to 500 weeks of total permanent disability plus temporary total disability benefits. This decision was based on a conflict between two different sections of the Act, §22-3-3-8 and §22-3-3-10. However, since *Lowell* was decided, the Act has been amended to include §22-3-3-32, which clarifies the Indiana legislature's intent that combined benefits for temporary total disability, temporary partial disability, and total permanent disability shall not exceed 500 weeks. It is the current practice of the Board to award the employee total permanent disability benefits AND permanent partial impairment benefits, if the employee's wages are low enough. The amount the employee may receive is still subject to the statutory maximum.

A total permanent disability award may be reduced by application of the apportionment statute, if the employee had a pre-existing disability/impairment. Ind. Code §22-3-3-12. Evidence must include vocational factors (usually from a vocational expert) in addition to permanent partial impairment ratings from a medical provider. *Bowles v. Griffin Industries,* 798 N.E.2d 908 (Ind. Ct. App. 2003).

V. PERMANENT PARTIAL IMPAIRMENT BENEFITS

Indiana Code §22-3-3-10

A. Computation Generally

When the employee's injury becomes "permanent and quiescent" or reaches "maximum medical improvement," a physician can establish a permanent partial impairment rating. It is the employer's obligation to provide the initial determination of permanent partial impairment. *Memorial Hospital v. Szuba,* 705 N.E.2d 519 (Ind. Ct. App. 1999). The amount of permanent partial impairment benefits payable to an employee is calculated pursuant to Indiana Code §22-3-3-10 which contains a schedule of specific values for certain body parts. The rating used by the Board will be that given to the specific body part injured—the Board does not convert the rating to the body as a whole as some physicians do under the various editions of the AMA *Guides to the Evaluation of Permanent Partial Impairment*. Whole-person ratings are used for back injuries because there is no specific value for the back in the Act. The Board will also use a whole-person rating for shoulder and hip injuries.

A schedule of compensation was developed for injuries which result in permanent partial impairment. The schedule reflects degrees of impairment and sets the dollar amount to be paid per degree of impairment.

Each classification of injury has a corresponding degree of impairment on which to calculate the compensation. The compensation scale of degrees of impairment varies depending on when the injury occurred. The Act also provides a schedule for rates used for computing permanent partial impairment benefits. Benefits for impairments from loss by separation (amputation) are doubled. Examples for calculating benefits are included towards the end of the manual.

B. Computation for Multiple Losses

Although it is recognized that the loss of two digits of the hand or two limbs imposes a greater impairment than the mere addition of the two separate impairments, the Indiana Worker's Compensation Act does not expressly provide values for all combinations of losses of digits and their phalanges or other multiple losses. However, the Board has adopted a formula for computing values for multiple losses of the fingers. This formula is included under a separate tab in the manual.

In the case of multiple losses to other parts of the body, the Board will combine the two injuries and arrive at a single impairment of the body as a whole. *Coachman Industries v. Yoder*, 422 N.E.2d 384 (Ind. Ct. App. 1981). In other words, the Board will not simply add up the degrees of impairment for each separate injury but will determine the impairment to the body as a whole. One possible method which physicians can use to combine two separate impairments to arrive at one impairment to the body as a whole is to use the combined values chart found in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. The physician converts the impairments of the separate body parts to impairments to the body as a whole and uses the combined value chart to arrive at one single rating to the body as a whole.

C. Pre-Existing Impairments

An employer is generally not responsible for an employee's pre-existing permanent partial impairment. Under the Act, where an employee's pre-existing impairment combines with the impairment resulting from a subsequent compensable injury and renders the employee either totally permanently disabled or permanently partially impaired to a greater degree than what would have resulted from a subsequent injury alone, the Worker's Compensation Board must apportion between the two conditions. Ind. Code §22-3-3-12; *U.S. Steel Corp. v. Spencer,* 655 N.E.2d 1243, 1246 (Ind. Ct. App. 1995). The employee bears the burden of establishing an apportionment between his work injury and the pre-existing impairment. *Anton v. Anton Interiors,* 363 N.E.2d 1286 (Ind. Ct. App. 1977). The Court of Appeals has cautioned that "merely common ailments" which do not rise to the level of permanent partial impairment or would not naturally result in total permanent disability on their own will not prevent an employer from bearing full responsibility for the injured employee's condition following the work injury. *U.S. Steel Corp.,* 655 N.E.2d at 1246. An employer is also fully responsible for the aggravation, triggering, or acceleration of a latent or dormant pre-existing condition.

VI. FUTURE OR LIFETIME MEDICAL TREATMENT

Often, injured employees may seek "future" or "lifetime treatment" even after the treating physician has released the employee from treatment and has placed the employee at maximum medical improvement.

In *Grand Lodge Free & Accepted Masons v. Jones*, 590 N.E.2d 653 (Ind. Ct. App. 1992), the Court found that the Worker's Compensation Board has discretion to award an employee continuing medical expenses for a time which it deems necessary to limit or reduce the amount and extent of the employee's permanent partial impairment, including palliative methods useful only to prevent pain and discomfort.

The Board does not hesitate to award "lifetime treatment" if the medical evidence supports it.

VII. MEDICARE SET ASIDE ISSUES

Pursuant to 42 C.F.R. § 411.24(b), The Center for Medicare and Medicaid Services (hereinafter "CMS") may initiate recovery upon learning that payment has been made or could have been made through worker's compensation. As to the amount of recovery allowable, if CMS does not have to take legal action to recover, CMS can recover the lesser of the following:

- The amount of the Medicare primary payment; and
- The full primary payment amount that the primary payer is obligated to pay under this part without regard to any payment, other than a full primary payment that the primary payer has paid or will make, or in the case of a third-party payment recipient, the amount of the third-party payment.

However, if legal action is undertaken by CMS, CMS may recover double the amount of the payment Medicare made as a primary payer.

A. Considerations Regarding When a Medicare Set Aside is Necessary

The Medicare Set Aside (hereinafter "MSA") is an account that is created as a result of the settlement of an individual's worker's compensation claim that is used to pay for future medical expenses that are: 1) attributed to an individual's work-related injury; and 2) would otherwise be payable by Medicare.

When settling a worker's compensation claim, a MSA is necessary if the future medical aspect of the claim is being settled on a final basis and *one* of the following exists:

- The claimant is currently a Medicare beneficiary and the total settlement amount is greater than $25,000.00; or
- The settlement amount exceeds $250,000.00 and the injured worker can reasonably expect to become a Medicare beneficiary within 30 months of the settlement.

An employee is eligible to receive Medicare benefits if he meets one of the following criteria:

- He is 65 years of age or older;
- He has been receiving Social Security Disability benefits for at least 24 months; or
- He is suffering from end-stage renal disease.

An employee can reasonably expect to become a Medicare beneficiary within 30 months if at the time of the settlement of his worker's compensation claim, he:

- Is between the ages of 62 ½ and 65 years;
- Has applied for or has been approved for Social Security Disability benefits;
- Has been denied Social Security Disability benefits but anticipates appealing the decision; or
- Has an end-stage renal disease but does not yet qualify for Medicare.

B. Determining the Amount of a Medicare Set Aside

The MSA amount is formulated by consideration and analysis of the following:

1. Date and nature of injury;
2. Age of the employee and his life expectancy;
3. Review of medical payment history;
4. Medical diagnosis and prognosis;
5. Medicare coverage limitations;
6. Worker's compensation fee schedules; and

7. Future medical needs for treatment of the work injury.

Several methods can be utilized to fund a MSA. Specifically, a MSA may be funded via a lump sum payment, a structured settlement annuity, or a combination of both. Structured settlements are a tool to fund a MSA depending on the amount of settlement because the cost of the annuity provides an additional savings to either the insured or the employer. If the MSA is exhausted between annuity payments, Medicare will step in and pay for qualified medical expenses until the release of the next annuity payment. If an employer or insured wishes to take Medicare's interest into account for a settlement that falls below the threshold for CMS review, language can be inserted into the settlement agreement that protects the employer's interest concerning a MSA.

We typically suggest utilizing a MSA vendor to send the proposed set aside plan to CMS. Because these companies deal with Medicare and CMS on a daily basis, the proposals are typically approved on the first submission and may save both the employer and the employee a significant amount of time in the settlement of the claim.

VIII. DEATH BENEFITS

Indiana Codes §22-3-3-16 to –19

The term "death benefits" refers to compensation payable when the employee is accidentally killed or when he or she dies as a result of complications from a work injury. Maximum benefits payable for an accidental death would equal 500 weeks. Funeral and burial expenses for an employee's death from an accidental injury are capped at $7,500.00. Ind. Code §22-3-3-21. According to Indiana Code §22-3-3-17, when an accidental death results from an injury within 500 weeks, there shall be paid to the total dependents weekly compensation amounting to 66 2/3% of the deceased's average weekly wage as defined by Indiana Code §22-3-3-22 until the compensation paid, when added to the compensation paid to the deceased employee, equals 500 weeks. Indiana Code §22-3-3-16 provides that if an employee dies from a cause other than the injury for which he was receiving compensation, and he was entitled to compensation for a definite period under an award, the unpaid balance of that compensation shall be made to his dependents, up to 500 weeks for first-class dependents and 350 weeks for the second- and third-class dependents. Indiana Code §22-3-3-19 establishes the rules for determining presumptive total dependents (first class) and total dependents-in-fact (second class). Partial dependents (third class) are entitled to compensation only if no other class of dependents exists.

Under Indiana Code §§22-3-3-18 and –19, presumptive dependents are entitled to death benefits to the exclusion of total dependents-in-fact. Typically, presumptive dependents are the surviving spouse and the employee's children. The presumptive dependents share equally in the weekly benefits. The employee's children qualify if they are unmarried children under the age of 21 who were living with the employee at the time of his death. Ind. Code §22-3-3-19. Under that section, an unmarried child not living with the parent-employee at the time of his death does not qualify as a presumptive dependent unless "the laws of the state impose the obligation to support such unmarried child" on the parent-employee. The Act also permits a physically or mentally incapacitated child over the age of 21 to qualify as a presumptive dependent in the event the parent-employee is obligated to support the child under

state law. A presumptive dependent's eligibility terminates upon the earlier of: 1) the exhaustion of benefits; 2) the marriage or death of that dependent; or 3) the attaining of the age of 21 by a child-dependent. In the event a surviving spouse is the sole remaining dependent, he or she is entitled upon remarriage to a lump sum settlement equal to the smaller of 104 weeks of compensation or the compensation for the remainder of the statutory maximum compensation period. There is no similar provision for a child who is the sole surviving dependent. When a presumptive dependent no longer qualifies for benefits, the remaining presumptive dependents share equally in the benefits. As a consequence, Section 19 makes difficult lump-sum settlements in cases involving multiple dependents (especially in "blended" families) because of the uncertainty of each dependent's continuing eligibility.

Total dependents-in-fact at the time of death share equally in compensation. The compensation payable to partial dependents-in-fact is determined by calculating the proportion of the average amount contributed weekly by the deceased to his dependents at the time of injury to the average weekly wage. Ind. Code §22-3-3-18.

IX. BAD FAITH CLAIMS - - ATTORNEYS' FEES

Indiana Code §§22-3-4-12, -12.1

In the normal case, attorneys' fees are taken by the employee's attorney from the compensation paid or awarded. Pursuant to Indiana Code §22-3-4-12, the Act provides for a separate award of attorneys' fees where the employer or its insurer has shown bad faith in adjusting and/or settling a claim. The reason for a separate award is that the employee may not have incurred additional attorneys' fees except for the bad faith acts of the employer. To collect fees under this section, the employee must first request them from the Board and present evidence to substantiate them. The Board must then make specific findings, reflecting its rationale for awarding bad faith attorneys' fees.

Indiana Code §22-3-4-12.1 subjects claims of bad faith to the exclusive jurisdiction of the Board. The Hearing Member is responsible for determining whether the employer or the employer's worker's compensation carrier or administrator has acted with a lack of diligence, in bad faith, or has committed an independent tort in adjusting or settling the claim for compensation. If the employee prevails, an award of $500.00 to $20,000.00 may be entered for acts of bad faith under a claim, depending on the degree of culpability of the employer/carrier and the actual damages sustained by the employee. In addition, attorneys' fees up to 1/3 of the amount of the bad faith award may be awarded by the Board.

The standards for sustaining the burden of proof in a bad faith claim are high. A review of Indiana case law makes it clear that bad faith amounts to more than bad judgment or negligence; it involves a conscious wrong doing because of a dishonest or immoral purpose, and contemplates a state of mind with ill will. *Johnston v. State Farm Mutual Automobile Ins. Co.*, 667 N.E.2d 802 (Ind. Ct. App. 1996).

X. SETTLEMENT AGREEMENTS AND PAYMENTS

Indiana Code §22-3-2-15 provides for voluntary settlements; however, they are unenforceable unless approved by the Worker's Compensation Board. There are several forms of settlement agreements available, depending upon the status of the claim with the Worker's Compensation Board and the manner of resolution between the parties. Where there is no Application pending with the Worker's Compensation Board and the parties have agreed to a permanent partial impairment or total permanent disability without other issues, the State Form 1043 can be used. Even with a pending Application, the Form 1043 can be utilized if there are no issues except permanent partial impairment or total permanent disability.

A. Stipulated Agreement

When other issues are resolved simultaneously with the issue of permanency, or arose previously but were resolved, it is recommended that a "stipulated agreement" be submitted which fully sets forth the resolution of all issues and the employer's satisfaction of its statutory obligations to the employee under the Act. This is the preferred form of settlement where there is no attempt to terminate the employee's rights of modification. This form of settlement does not affect the employee's rights of review or of modification under Indiana Code §22-3-4-7 and Indiana Code §22-3-3-27, meaning the case may be reopened for a change in condition or need for additional medical care.

B. Section 15 or Compromise Agreement ("Full and Final")

Where a dispute exists regarding liability for compensation (such as employment, accidental injury, additional medical care, temporary disability benefits, pre-existing condition, or course and scope of employment), it is recommended that the employer utilize Indiana Code §22-3-2-15 (Section 15 or Compromise Agreement) to terminate its liability to the employee once and for all. This is known as a "Section 15 Agreement" or "compromise agreement." Some call it a "full and final" settlement agreement. Under such an agreement, the employee waives any right to reopen his case absent mutual mistake, fraud, trickery, or duress. *Goff v. Wal-Mart Stores, Inc.*, 719 N.E.2d 1260 (Ind. Ct. App. 1999).

On June 12, 2018, the Board issued a Notice itemizing elements which are to be included in a settlement agreement when submitted to the Board for approval. While certain elements are only "necessary" when the injured worker is *pro se* (i.e., without counsel), the Board indicated the information is "advisable" in all complicated cases. The list includes the following information which was not previously required:

- Number of weeks of temporary total disability ("TTD") benefits received by the injured employee;
- Estimated total medical expenses paid to date;
- Description of surgical procedures performed;
- Discussion of outstanding medical bills and indication as to which party will be responsible for payment;
- Permanent Partial Impairment ("PPI") rating calculation;
- List of any existing liens and how they will be resolved; and

- Any permanent physical restrictions assigned by the treating physician.

The Board will also require the parties to submit the following supporting documentation with all settlement agreements submitted for approval:

- Final medical report of the injured employee's treating physician;
- IME report (if any);
- PPI report and accompanying hand or foot chart showing level of amputation (if applicable);
- Employee waiver of examination by personal physician (if any); and
- Functional Capacity Evaluation if available and relevant.

In addition to itemizing information which must be included in a settlement agreement, the Board also provided guidelines on terms which are not to be included. The prohibited terms include the following:

- Confidentiality clauses with liquidated damages provisions;
- Blanket releases of any and all claims beyond the worker's compensation claim; and
- Employee resignation requirements.

C. Statutory Changes Requiring Prompt Payments

Indiana Code §22-3-2-15, was revised effective July 1, 2018 to provide that the settlement payment for a Section 15 or Compromise Agreement must be made within 30 days of the Board approving the settlement agreement. Failure to do so subjects the employer to a civil penalty. The revised section does not clarify if payment must be "issued" or "delivered" by the 30-day deadline, nor does it provide additional time for an employer who receives notice of the Board approval in an untimely manner. Thus, the employer may have less than 30 days to process and effect payment or face civil penalties.

Also effective July 1, 2018, Indiana Code §22-3-3-24 was amended to require payment of an "award of compensation ordered by a single hearing member of the worker's compensation board . . . not later than thirty (30) days after the date of the award, or as the award provides, if the award is not appealed to the full board."

This 30-day period runs concurrently with the 30-day period to appeal an award. An employer must promptly determine whether it intends to appeal an award ordered by a Hearing Member. The employer would likely not have sufficient time to issue payment if it waits until the end of the 30-day appeal period and chooses not to appeal the award. An employer who fails to comply with this subsection is subject to a civil penalty under Indiana Code §22–3–4–15.

Indiana Code §22-3-3-7(b) requires employers to file proposed Agreements to Compensation (State Form 1043 or State Form 18875) electronically and serve them on the employee or the employee's dependents within 15 days of the date the first installment of compensation is due. The first installment is due 14 days after the disability begins (usually the "Date of Injury").

Although the revised statute is silent as to revised Agreements to Compensation, we recommend electronically filing any alterations or new Agreements with the Board and serving them on the employee.

Indiana Code §22-3-3-10.5 requires employers to provide a physician statement containing a permanent partial impairment ("PPI") rating to the employee within 15 days of the date listed on the physician's statement. (Similar to the requirement of making payment for an approved agreement, above, there is no grace period for delayed delivery of the physician's statement.) At the same time, the employer must provide a proposed stipulated settlement agreement using the value of the assigned PPI rating and an Employee Waiver of Examination by Personal Physician (State Form 53913). If the employee agrees to the stipulated settlement, the signed agreement must be submitted to the Board for approval within 15 days of receipt of the signed agreement from the employee. If the agreement is approved by the Board, the employer must make payment within 30 days of the approval or face civil penalties.

These requirements may limit an employer's ability to seek a Section 15 or Compromise Agreement on short notice. Further, the requirements of Indiana Code §22-3-3-10.5 do not address situations where an employee suffers injuries to multiple body parts as the result of one accident. In such a situation, the employee may be placed at maximum medical improvement ("MMI") and assigned a PPI rating for one body part, but may continue to receive disability payments and authorized treatment for another body part. A common sense interpretation of the statute would only require an employer to provide a proposed stipulated settlement agreement and Employee Waiver of Examination by Personal Physician following complete placement at MMI and the assignment of a final, comprehensive PPI rating.

D. Information We Need to Prepare a Settlement Agreement

If a claim is assigned to us to prepare a settlement agreement after the injured employee has been placed at maximum medical improvement ("MMI"), we recommend enclosing the following at the time of the assignment:

- First Report of Employee Injury, Illness;
- Agreement to Compensation and/or Report of TTD/TPD Termination;
- Claim Transaction Detail Report or Payment Register reflecting TTD benefits and medical expenses paid to date;
- Treating physician's final medical report with MMI determination and description of any physical restrictions;
- PPI report;
- Lien notices (i.e. Medicare or private insurer) (if any);
- Information regarding subrogation procedures;
- IME report (if any); and
- FCE report (if any).

XI. FORMULARY PRESCRIPTION DRUGS

Effective January 1, 2019, two new sections have been added to the Act which affect the approval of "non-preferred" drugs.

Indiana Code §22-3-3-4.7 and §22-3-7-17.6 state that, beginning January 1, 2019, reimbursement is not permitted for a claim of payment for a drug that is an "N" (non-preferred) drug by the Official Disability Guidelines (ODG) Worker's Compensation Drug Formulary Appendix A published by MCG Health (the "Formulary") which is prescribed for an employee who has filed a notice of injury.

When 1) a doctor prescribes an "N" drug; and 2) the doctor provides medical reasoning for the drug;

- The employer may approve the drug, allowing the "N" drug to be prescribed; or
- If the employer does not approve the drug, the employer shall:
    1. Send the prescription request to a third party that is certified by the Utilization Review Accreditation Commission to make a determination on the requested prescription; and
    2. Notify the prescribing doctor and the employee of the third party's determination within five (5) days of the prescription request.
        a. If the third party determines the "N" drug should be denied:
            1. The employer shall notify the prescribing doctor and the employee of the determination.
            2. The employee may appeal the denial to the Worker's Compensation Board of Indiana (the "Board").

If the employer fails to provide notice to the prescribing doctor and the employee within five (5) days of the prescription request, the prescription is deemed approved and reimbursement for the "N" drug is authorized by the Act.

Any approval of an "N" drug prescription is valid only for a single prescription order. If the prescribing doctor prescribes the "N" drug again, the same review process is required.

If a drug is prescribed to an employee during a "medical emergency," the employee shall receive the prescribed drug even if it is an "N" drug according to the Formulary. A medical emergency is a sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain that in the absence of immediate medical attention could reasonably be expected to result in:

1. Serious jeopardy to the employee's health or bodily functions; or
2. Serious dysfunction of a body part or organ.

What does it mean?

Beginning in 2019, if a doctor in a worker's compensation case prescribes a non-preferred "N" drug, the employer/insurer must approve the prescription for the prescription to be authorized and payable as a covered medical benefit under the Act. If the employer/insurer denies the prescription, it must follow the steps above to provide notice and a third party determination within five (5) days of the prescription request, or the prescription is deemed authorized.

The employee may appeal any denial to the Board. Prescriptions for "N" drugs are deemed authorized if issued during a medical emergency.

CHECKLIST OF DEFENSES TO WORKER'S COMPENSATION CLAIMS IN INDIANA

The following is a checklist of some of the principal defenses to worker's compensation claims under Indiana law, which has been prepared to assist investigators and claims adjusters in reviewing claims:

_____ 1. Is the claimant an "employee"?

_____ 2. Is the employee exempt (certain railroad employees; members of fire or police departments who are members of the pension funds, unless the common council elects otherwise; casual laborers; farm or agricultural employees; or household employees)?

_____ 3. Was the injury a result of an "accident arising out of and in the course of the employment"?

_____ 4. Was the injury caused by "the employee's knowingly self-inflicted injury"?

_____ 5. Was the injury caused by the employee's "intoxication"?

_____ 6. Was the injury caused by the employee's "commission of an offense" (felony or misdemeanor)?

_____ 7. Was the injury caused by the employee's "knowing failure to use a safety appliance"?

_____ 8. Was the injury caused by the employee's "knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work"?

_____ 9. Was the injury caused by the employee's "knowing failure to perform any statutory duty"?

_____ 10. Was the injury caused by the employee's "willful intention to injure another"?

_____ 11. Is there an unjustified refusal of a partially disabled employee to accept suitable employment?

_____ 12. Is there a prior compromise settlement agreement?

_____ 13. Was notice of the injury given to or knowledge obtained by the employer within thirty (30) days of the injury or death and actual prejudice resulted from the lack of notice?

_____ 14. Was an Application filed with the Worker's Compensation Board within:
   a) 2 years of the accident or death; or
   b) 2 years from the last day for which compensation was paid for an alleged change in condition or for additional medical treatment or benefits?

_____ 15. Has the employee received settlement or judgment proceeds from a third party who caused the compensable injuries?

_____ 16. Is there an unjustified refusal of an employee to accept reasonable medical care authorized by the employer?

STATUTES OF LIMITATIONS
UNDER THE
INDIANA WORKER'S COMPENSATION ACT

EXAMPLES

The following is a chart of limitation periods applicable to claims for medical expenses, temporary total disability benefits and permanent partial impairment benefits under the Indiana Worker's Compensation Act (Ind. Code §22-3-3-3 and Ind. Code §22-3-3-27):

I.

An employee is injured on January 2, 2010, and
receives no medical or other benefits of any kind.

Benefits	Statute of Limitations
Medical Expenses	January 2, 2012 [Two years from January 2, 2010, the date of the accident.]*
Temporary Total Disability	January 2, 2012 [two years from January 2, 2010, the date of the accident.]*
Permanent Partial Impairment	January 2, 2012 [two years from January 2, 2010, the date of the accident.]*
*In exposure to radiation cases, two years from the date on which the employee knew or by exercise of reasonable diligence should have known of his injury and its causal relationship to his employment.	

II.

An employee is injured on January 2, 2010.
Liability is accepted and the employee receives medical
benefits through January 2, 2011, when his condition
becomes permanent and quiescent.

Benefits	Statute of Limitations
Medical Expenses	January 2, 2012 [Two years from January 2, 2010, the date of the accident, because medical expenses are not compensation under I.C. §22-3-3-27.]
Temporary Total Disability	January 2, 2012 [two years from January 2, 2010, the date of the accident, because medical expenses are not compensation under I.C. §22-3-3-27.]
Permanent Partial Impairment	January 2, 2012 [two years from January 2, 2010, the date of the accident, because medical expenses are not compensation under I.C. §22-3-3-27.]

III.

An employee is injured on January 2, 2010 and receives medical benefits and temporary total disability benefits through January 2, 2011, when his condition becomes permanent and quiescent and PPI is awarded and dated back to the date of injury.

Benefits	Statute of Limitations
Medical Expenses	January 2, 2013 [Two years from January 2, 2011, the last date for which compensation was paid under the agreement as to temporary total disability.]
Temporary Total Disability	January 2, 2013 [Two years from January 2, 2011, the last date for which compensation was paid under the original agreement as to temporary total disability.]
Permanent Partial Impairment	January 2, 2013 [Two years from January 2, 2011, the last date for which temporary total disability was paid.]

IV.

An employee is injured on January 2, 2010 and receives medical benefits and temporary total disability benefits through January 2, 2011, when his condition becomes permanent and quiescent, at which time he also receives a lump sum payment of permanent partial impairment benefits based upon a 10% rating awarded and dated back to the date of injury.

Benefits	Statute of Limitations
Medical Expenses	January 2, 2013 [Two years from January 2, 2011, the last date for which compensation was paid.]
Temporary Total Disability	January 2, 2013 [Two years from January 1, 2011, the last date for which compensation was paid.]
Permanent Partial Impairment	January 2, 2013 [Two years from January 2, 2011, the last date for which compensation was paid.]

V.

An employee is injured on January 2, 2010 and receives medical benefits and temporary total disability benefits through January 2, 2012, when his condition becomes permanent and quiescent, plus permanent partial impairment benefits through January 2, 2013.

Benefits	Statute of Limitations
Medical Expenses	January 2, 2015 [Two years from January 2, 2013, the last date for which compensation was paid.]
Temporary Total Disability	January 2, 2015 [Two years from January 2, 2013, the last date for which compensation was paid.]
Permanent Partial Impairment	January 2, 2015 [Two years from January 2, 2013, the last date for which compensation was paid.]

VI.

An employee is injured on January 2, 2010 and receives temporary total disability benefits until January 2, 2012, when he returns to work. He receives medical benefits from the date of the accident and continues receiving them until his injury becomes permanent and quiescent on January 2, 2014, at which time he also receives a lump sum payment of permanent partial impairment benefits based upon a ten percent (10%) rating (and the agreement provides that the permanent partial impairment benefits begin on the date of injury).

Benefits	Statute of Limitations
Medical Expenses	January 2, 2014 [Assuming permanent partial impairment benefits were specified to be paid for the period beginning on the date of the accident and ending 50 weeks later, the statute of limitations of two years from the last date for which compensation was paid would run from January 2, 2012, the last date for which temporary total disability benefits were paid.]
Temporary Total Disability	January 2, 2014 [Assuming permanent partial impairment benefits were specified to be paid for the period beginning on the date of the accident and ending 50 weeks later, the statute of limitations of two years from the last date for which compensation was paid would run from January 2, 2012, the last date for which temporary total disability benefits were paid.]
Permanent Partial Impairment	January 2, 2014 [Assuming permanent partial impairment benefits were specified to be paid for the period beginning on the date of the accident and ending 50 weeks later, the statute of limitations of two years from the last date for which compensation was paid would run from January 2, 2012, the last date for which temporary total disability benefits were paid.]
Note that in this example, in consequence of the payment of permanent partial impairment benefits retroactive to the date of the accident, the applicable statutes of limitations have already expired as of the date the permanent partial impairment benefits are actually paid.	

SUBROGATION AND LIEN RIGHTS IN THIRD-PARTY CLAIMS

I. Indiana Code §22-3-2-13.

II. Employee has two years to bring action.

III. Employee must notify employer/carrier of action within 30 days after filing.

IV. Employer/carrier may join in action within 90 days after receipt of notice.

V. If no action by employee, employer/carrier may bring action within one year of expiration of employee's limitation or within one year of dismissal of employee's action.

VI. Employee must repay amounts received by judgment or settlement (or turn over to employer/carrier for collection).

A. Lien must be reduced by percentage of comparative fault or other reasons reducing the value of the claim such as inadequate insurance coverage.

VII. Employer/carrier responsible to pay its pro rata share of costs and expenses and attorneys' fees of 25% (if no lawsuit) or 33-1/3% (if lawsuit) of amount of benefits paid (after deducting expenses).

VIII. Lien may be waived (and no payment of pro rata share required).

SCHEDULE OF INJURIES FOR DETERMINING PERMANENT PARTIAL IMPAIRMENT BENEFITS

INDIANA CODE §22-3-3-10

	Degrees
Thumb (1st digit)	12
Index Finger (2nd digit)	8
Second Finger (3rd digit)	7
Third or Ring Finger (4th digit)	6
Fourth or Little Finger (5th digit)	4
Hand below elbow	40
Arm above elbow (includes elbow injuries)	50
Big Toe	12
Second Toe	6
Third Toe	4
Fourth Toe	3
Little Toe	2
Foot below knee	35
Leg above knee (includes knee injuries)	45
Loss of one eye or its reduction of sight to one-tenth (1/10) normal vision	35
Hearing loss (one ear)	15
Total hearing loss (both ears)	40
Loss one testicle	10
Loss both testicles	30
Both hands, both feet, sight of both eyes or any two such losses in same accident	100
Disfigurement that impairs future usefulness or opportunities (if no compensation otherwise)	40

*Based on scale of 0% - - no impairment
100% - - total body impairment

**The Board considers shoulder and knee injuries to be injuries to the person as a whole.

COMPENSATION INFORMATION FOR INJURIES OCCURRING FOR JULY 1, 2014 to JUNE 30, 2015

CALCULATIONS FOR TEMPORARY TOTAL DISABILITY (INDIANA CODE §22-3-3-22)	
Minimum Average Weekly Wage	$75.00
Maximum Average Weekly Wage	$1,040.00
Minimum Benefit-Use Actual AWW If Less than $50 Benefit	$50.00
Maximum Benefit	$693.33

CALCULATIONS FOR PERMANENT PARTIAL IMPAIRMENT (INDIANA CODE §22-3-3-10)

Degrees*	$ Per Degree
1 - 10	$1,517
11 - 35	$1,717
36 - 50	$2,862
51 - 100	$3,687

*This is a graduated scale. For example:

Loss of Use of Hand below Elbow – 40 degrees

10 degrees x $1,517.00 = $15,170.00
25 degrees x $1,717.00 = $42,925.00
5 degrees x $2,862.00 = $14,310.00
40 degrees $72,405.00 (maximum benefit)

$72,405.00 divided by $693.33 (TTD rate) = 104.43 weeks

**For less than complete loss of use (i.e., permanent partial impairment), multiply rating by degrees for that body part before determining degrees of compensation. For example:

Doctor renders rating of 10% permanent partial impairment to the hand;
10% of 40 degrees = 4 degrees
4 degrees x $1,517.00 = $6,068.00
This can be paid in a lump sum or weekly by dividing by the temporary total disability rate.
The dollar benefits per degree are **DOUBLED FOR AMPUTATIONS**.
Weeks of TTD after which employer is entitled to a credit: 125 weeks.

MAXIMUM COMPENSATION EXCLUSIVE OF MEDICAL BENEFITS (INDIANA CODE §22-3-3-22)	
Maximum Compensation (disability + impairment)	$347,000.00

Disability (TTD + TPD + PTD) may not exceed 500 weeks. Minimum benefit in case of permanent total disability is $75,000.00. Indiana Code §22-3-3-32.

COMPENSATION INFORMATION FOR INJURIES OCCURRING FOR JULY 1, 2015 to JUNE 30, 2016

CALCULATIONS FOR TEMPORARY TOTAL DISABILITY (INDIANA CODE §22-3-3-22)	
Minimum Average Weekly Wage	$75.00
Maximum Average Weekly Wage	$1,105.00
Minimum Benefit-Use Actual AWW If Less than $50 Benefit	$50.00
Maximum Benefit	$736.67

CALCULATIONS FOR PERMANENT PARTIAL IMPAIRMENT (INDIANA CODE §22-3-3-10)

Degrees*	$ Per Degree
1 - 10	$1,633
11 - 35	$1,835
36 - 50	$3,024
51 - 100	$3,873

*This is a graduated scale. For example:

Loss of Use of Hand below Elbow – 40 degrees

10 degrees x $1,633.00 = $16,330.00
25 degrees x $1,835.00 = $45,875.00
5 degrees x $3,024.00 = $15,120.00
40 degrees $77,325.00 (maximum benefit)

$77,325.00 divided by $736.67 (TTD rate) = 105.00 weeks

**For less than complete loss of use (i.e., permanent partial impairment), multiply rating by degrees for that body part before determining degrees of compensation. For example:

Doctor renders rating of 10% permanent partial impairment to the hand;
10% of 40 degrees = 4 degrees
4 degrees x $1,633.00 = $6,532.00
This can be paid in a lump sum or weekly by dividing by the temporary total disability rate.
The dollar benefits per degree are **DOUBLED FOR AMPUTATIONS**.
Weeks of TTD after which employer is entitled to a credit: 125 weeks.

MAXIMUM COMPENSATION EXCLUSIVE OF MEDICAL BENEFITS (INDIANA CODE §22-3-3-22)	
Maximum Compensation (disability + impairment)	$368,000.00

Disability (TTD + TPD + PTD) may not exceed 500 weeks. Minimum benefit in case of permanent total disability is $75,000.00. Indiana Code §22-3-3-32.

COMPENSATION INFORMATION FOR INJURIES OCCURRING ON OR AFTER JULY 1, 2016

CALCULATIONS FOR TEMPORARY TOTAL DISABILITY (INDIANA CODE §22-3-3-22)	
Minimum Average Weekly Wage	$75.00
Maximum Average Weekly Wage	$1,170.00
Minimum Benefit-Use Actual AWW If Less than $50 Benefit	$50.00
Maximum Benefit	$780.00

CALCULATIONS FOR PERMANENT PARTIAL IMPAIRMENT (INDIANA CODE §22-3-3-10)

Degrees*	$ Per Degree
1 - 10	$1,750
11 - 35	$1,952
36 - 50	$3,186
51 - 100	$4,060

*This is a graduated scale. For example:

Loss of Use of Hand below Elbow – 40 degrees

10 degrees x $1,750.00 = $17,500.00
25 degrees x $1,952.00 = $48,800.00
5 degrees x $3,186.00 = $15,930.00
40 degrees $82,230.00 (maximum benefit)

$82,230.00 divided by $780.00 (TTD rate) = 105.42 weeks

**For less than complete loss of use (i.e., permanent partial impairment), multiply rating by degrees for that body part before determining degrees of compensation. For example:

Doctor renders rating of 10% permanent partial impairment to the hand;
10% of 40 degrees = 4 degrees
4 degrees x $1,750.00 = $7,000.00
This can be paid in a lump sum or weekly by dividing by the temporary total disability rate.
The dollar benefits per degree are **DOUBLED FOR AMPUTATIONS**.
Weeks of TTD after which employer is entitled to a credit: 125 weeks.

MAXIMUM COMPENSATION EXCLUSIVE OF MEDICAL BENEFITS (INDIANA CODE §22-3-3-22)	
Maximum Compensation (disability + impairment)	$390,000.00

Disability (TTD + TPD + PTD) may not exceed 500 weeks. Minimum benefit in case of permanent total disability is $75,000.00. Indiana Code §22-3-3-32.

WORKER'S COMPENSATION NOTICE

Your employer is required to provide for payment of benefits under the Worker's Compensation Act of the State of Indiana.

Any employee who is injured while at work should report the injury immediately to their supervisor, employer, or designated representative.

The worker's compensation insurance carrier or the administrator for

_____ is: _____
(name of company) (name of insurance carrier or administrator)

_____
(name of carrier/administrator)

_____
(mailing address)

_____
(city, state, zip)

_____
(telephone number)

_____
(contact person)

For more information about rights or procedures under the Indiana Worker's Compensation system, call or write:

Worker's Compensation Board of Indiana
Ombudsman Division
402 W. Washington St., Rm W196
Indianapolis, IN 46204
(317) 232-3808
1-800-824-2667

NOTICIA DE COMPENSACION PARA TRABAJADORES

A su empleador le es requerido proveer pagos de beneficios bajo el Acta de Compensación para Trabajadores del Estado de Indiana.

Cualquier empleado que sea lesionado mientras esté trabajando debe reportar el accidente laboral inmediatamente a su supervisor, empleador o representante designado.

La compaňía de seguro de compensación del trabajador o el administrador de la compaňía _____ es:
(nombre de la compaňía)

_____
(nombre de la compaňía de seguro/administrador)

_____
(dirección)

_____
(ciudad, estado, código postal)

_____
(número de teléfono)

_____
(persona de contacto)

Para más información acerca de sus derechos o los procedimientos bajo el sistema de compensación para trabajadores de Indiana, llame o escriba a:

Worker's Compensation Board of Indiana
Ombudsman Division
402 W. Washington St., Rm W196
Indianapolis, IN 46204
(317) 232-3808
1-800-824-2667

INDIANA WORKER'S COMPENSATION
FIRST REPORT OF EMPLOYEE INJURY, ILLNESS

State Form 34401 (R10 / 1-02)

FOR WORKER'S COMPENSATION BOARD USE ONLY		
Jurisdiction	Jurisdiction claim number	Process date

Please return completed form electronically by an approved EDI process.

PLEASE TYPE or PRINT IN INK

NOTE: Your Social Security number is being requested by this state agency in order to pursue its statutory responsibilities. Disclosure is voluntary and you will not be penalized for refusal.

EMPLOYEE INFORMATION

Social Security number	Date of birth	Sex ☐ Male ☐ Female ☐ Unknown	Occupation / Job title	NCCI class code
Name (*last, first, middle*)		Marital status ☐ Unmarried ☐ Married ☐ Separated ☐ Unknown	Date hired / State of hire	Employee status
Address (*number and street, city, state, ZIP code*)			Hrs / Day / Days / Wk / Avg Wg / Wk	☐ Paid Day of Injury ☐ Salary Continued
Telephone number (include area		Number of dependents	Wage $ Per ☐ Hour ☐ Day ☐ Week ☐ Month ☐ Year ☐ Other	

EMPLOYER INFORMATION

Name of employer	Employer ID#	SIC code	Insured report number
Address of employer (*number and street, city, state, ZIP code*)	Location number	Employer's location address (*if different)*	
	Telephone number		
	Carrier / Administrator claim number	OSHA log number	Report purpose code
Actual location of accident / exposure (*if not on employer's premises*)			

CARRIER / CLAIMS ADMINISTRATOR INFORMATION

Name of claims administrator	Carrier federal ID number	Check if appropriate ☐ Self Insurance
Address of claims administrator (*number and street, city, state, ZIP code*)	☐ Insurance Carrier ☐ Third Party Admin.	Policy / Self-insured number
Telephone number		Policy period From To
Name of agent	Code number	

OCCURRENCE / TREATMENT INFORMATION

Date of Inj./ Exp.	Time of occurrence ☐ AM ☐ PM ☐ Cannot be determined	Date employer notified	Type of injury / exposure	Type code
Last work date	Time workday began	Date disability began	Part of body	Part code
RTW date	Date of death	Injury / Exposure occurred on employer's premises? ☐ Yes ☐ No	Name of contact	Telephone number
Department or location where accident / exposure occurred			All equipment, materials, or chemicals involved in accident	
Specific activity engaged in during accident / exposure			Work process employee engaged in during accident / exposure	
How injury / exposure occurred. Describe the sequence of events and include any relevant objects or substances.				Cause of injury code
Name of physician / health care provider				
Hospital or offsite treatment (*name and address*)				INITIAL TREATMENT ☐ No Medical Treatment ☐ Minor: By Employer ☐ Minor: Clinic / Hospital ☐ Emergency Care ☐ Hospitalized > 24 Hours ☐ Future Major Medical / Lost Time Anticipated
Name of witness	Telephone number	Date administrator notified		
Date prepared	Name of preparer	Title	Telephone number	

An employer's failure to report an occupational injury or illness may result in a $50 fine (IC 22-3-4-13).

INSTRUCTIONS

General Instructions:

1. Please enter information into all of the areas of the First Report form, except the boxes at the top right corner of the form which is for office use only.

2. Enter all dates in MM/DD/YY format.

3. Please return completed form electronically by an approved EDI process.

4. For answers to questions, please call (317) 232-3808.

Definitions:

AGENT NAME AND CODE NUMBER: Enter the name of your insurance agent and his / her code number if known. This information can be found on your insurance policy.

ALL EQUIPMENT, MATERIALS OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR EXPOSURE OCCURRED: List anything the employee was using, applying, handling or operating when the injury or exposure occurred. If the injury involves a fall, indicate any surfaces and / or objects the claimant fell on and where they fell from. Enter "NA" if no equipment, materials or chemicals were being used (*e.g. Acetylene cutting torch, metal plate, etc.*).

AVG WG/WK: Claimant's average weekly wage, calculated by totaling the latest 52 weeks of wages (*including overtime, tips, etc.*) and dividing by 52.

CLAIMS ADMINISTRATOR: Enter the name of the carrier, third-party administrator, state fund, or self-insured responsible for administering the claim.

CONTACT NAME / TELEPHONE NUMBER: Enter the name of the individual at the employer's premises to be contacted for additional information (*i.e. Supervisor, HR Person, Nurse, etc.*)

DATE DISABILITY BEGAN: The first day on which the claimant originally lost time from work due to the occupational injury or disease or as otherwised deigned by statute.

DEPARTMENT OR LOCATION WHERE ACCIDENT OR EXPOSURE OCCURRED: If the accident or exposure did not occur on the employer's premises, enter address or location. Be specific (*e.g. Maintenance, Client's Office, Cafeteria, etc.*).

EMPLOYEE STATUS: Indicate the employee's work status from the following choices: Full-time, Part-time, Apprentice Full-time, Apprentice Part-time, Volunteer, Seasonal Worker, Piece Worker, On-Strike, Disabled, Retired, Not Employed or Unknown (you may also abbreviate the above as: (*FT, PT, AFT, APT, VO, SW, PW, OS, DI, RE, NE, or UK*).

HOW INJURY / ILLNESS OCCURRED: Describe the sequence of events leading to the injury or exposure (*e.g. Worker stepped back to inspect work and slipped on some scrap metal. As worker fell, he brushed against the hot metal; Worker stepped to the edge of the scaffolding, lost balance and fell six feet to the concrete floor. The worker's right wrist was broken in the fall*).

NCCI CLASS CODE: A four-digit code classifying the occupation of the claimant.

OCCUPATION / JOB TITLE: Enter the primary occupation of the claimant at the time of the accident or exposure.

PART OF BODY AFFECTED: Indicate the part of body affected by the injury / illness (*e.g. Right forearm, Low Back, etc.*)

REPORT PURPOSE CODE: 00 = Original First Report of Injury; 02 = Updated or Amended First Report.

RTW DATE (Return to Work Date**):** Enter the date following the most recent disability period on which the employee returned to work.

SIC CODE: This is the code which represents the nature of the employer's business which is contained in the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

SPECIFIC ACTIVITY EMPLOYEE ENGAGED IN DURING ACCIDENT / EXPOSURE: Describe the specific activity the employee was engaged in during the accident or exposure (*e.g. Cutting metal plate for flooring, sanding ceiling woodwork in preparation for painting*).

TYPE OF INJURY / ILLNESS: Briefly describe the nature of the injury or illness (*e.g. Contusion, Laceration, Fracture, etc.*)

WORK PROCESS THE EMPLOYEE WAS ENGAGED IN DURING ACCIDENT / EXPOSURE: Enter "NA" if employee was not engaged in a work process, such as if walking down the hallway (*e.g. Building maintenance*).

AGREEMENT TO COMPENSATION OF EMPLOYEE & EMPLOYER

State Form 1043 (R3 / 3-09)

INDIANA WORKER'S COMPENSATION BOARD
402 West Washington Street, Room W196
Indianapolis, IN 46204

* Your Social Security number is being requested by this state agency in accordance with IC 22-3-4-13; disclosure is voluntary, and you will not be penalized for refusal.

Please check appropriate box. ☐ Temporary Total Disability (TTD) ☐ Temporary Partial Disability (TPD) ☐ Permanent Partial Impairment (PPI) ☐ Permanent Total Disability (PTD)		File number
Name of employer	Employer's Federal identification number	Telephone number ( )
Address *(number and street, city, state, and ZIP code)*		
Name of employee	Employee's Social Security number *	Telephone number ( )
Address *(number and street, city, state, and ZIP code)*		

We *(employee and employer)* have reached an agreement in regards to compensation for the injury sustained by said employee and submit the following statement of facts relative thereto.

Date of injury / illness / exposure *(month, day, year)*	Date disability began *(month, day, year)*
Nature of injury / illness / exposure	
Place of injury / illness / exposure	
Cause of injury / illness / exposure	
Probable length of disability	

The terms of this agreement under the above facts are as follows:

That _____ shall receive compensation at the rate of $ _____ per week based upon an average weekly wage of $ _____ and that said compensation shall be payable *(i.e., weekly or bi-weekly)* _____ until terminated in accordance with the provisions of the Indiana Worker's Compensation / Occupational Disease Acts.

If PPI settlement, please provide impairment rating, number of weeks, and amount to be paid.

SIGNATURES

Signature of employee		Date (*month, day, year*)
Signature of employer		Date (*month, day, year*)
Name of insurance carrier	Telephone number ( )	*(FOR BOARD USE ONLY)*
Address *(number and street)*		
City, state, and ZIP code		
Authorized signature	Date of agreement (*month, day, year*)	
Title		

NOTICE OF INABILITY TO DETERMINE LIABILITY/ REQUEST FOR ADDITIONAL TIME

State Form 48557 (R2 / 7-12)

PRIVACY NOTICE

* This agency is requesting disclosure of your Social Security number in accordance with IC 22-3-4-13. This disclosure is not mandatory and you will not be penalized for refusing.

INSTRUCTIONS:
1. *Please type or print in ink.*
2. *Complete appropriate sections of this document and sign in the space below.*

Accident number

CLAIM INFORMATION

Name of employer	Federal Identification number	Telephone number ( )
Address of employer *(number and street, city, state, and ZIP code)*		Insurer claim number
Name of insurer / TPA	Date of injury *(month, day, year)*	Date employer notified of injury *(month, day, year)*
Name of adjuster	Date employer notified of work restriction or prohibition *(month, day, year)*	
E-mail address of adjuster		Telephone number of adjuster ( )
Name of employee		Social Security number *
Address of employee *(number and street, city, state, and ZIP code)*		Telephone number ( )

REQUEST FOR ADDITIONAL TIME

Notice of inability to determine liability must be made in writing and received by the Board and the employee not later than thirty (30) days after the employer's knowledge of the injury (IC 22-3-3-7). *(Check appropriate action below.)*

☐ Medical care only claim from _____ to _____.

Nature of alleged injury: _____

☐ Initial request for additional sixty (60) days.
Reasons determination cannot be made within thirty (30) days:

_____

Facts or circumstances necessary to determine liability:

_____

☐ Request for additional time beyond sixty (60) days. *(Must include details of first request above.)*
Extraordinary circumstances which have precluded determination of liability:

_____

Status of investigation:

_____

Facts or circumstances necessary to determine liability:

_____

Timetable for completion of remaining investigation:

_____

EMPLOYER / CARRIER CERTIFICATION

Employer / Adjuster must sign below to certify service.

Signature of employer / adjuster

Date issued *(month, day, year)*	By: ☐ U.S. Mail ☐ Personal Service

WORKERS COMPENSATION BOARD
402 W. Washington St., Rm. W196
Indianapolis, IN 46204-2753

FOR BOARD USE ONLY

NOTICE OF DENIAL OF BENEFITS

State Form 53914 (R2 / 7-12)

WORKER'S COMPENSATION BOARD
402 West Washington Street, Room W196
Indianapolis, IN 46204-2753

* This agency is requesting disclosure of Social Security Number in accordance with IC 22-3-4-13; disclosure is voluntary and you will not be penalized for refusal.

INSTRUCTIONS: 1. *Notice of Denial of Benefits must be made in writing and received by the Workers Compensation Board not later than thirty (30) days after the employer's knowledge of the injury. (IC 22-3-3-7)*
2. *Mail to the Worker's Compensation Board at the above address.*

Date of injury *(month, day, year)*	Date employer notified of injury *(month, day, year)*	Date of employer notified of work restriction or prohibition *(month, day, year)*	Accident number

CLAIM INFORMATION

Name of employer	Federal identification number	Telephone number ( )

Address *(number and street, city, state, and ZIP code)*

Name of insurer	Insurer claim number

Address *(number and street, city, state, and ZIP code)*

Name of adjuster / case manager	Telephone number ( )	E-mail address

Name of employee	Social Security Number *

Address *(number and street, city, state, and ZIP code)*

Telephone number ( )	E-mail address

NOTICE OF DENIAL

☐ Claim deemed not compensable, no benefits paid.	☐ Medical care only claim from _____, 20__ to _____, 20__; compensation denied.
Explanation:	Explanation:

NOTICE TO EMPLOYEES

By filing this form, your employer or its insurance carrier has indicated to the Indiana Workers' Compensation Board that it has cause to deny workers compensation benefits for your reported injury. You may or may not agree with this denial of benefits.

If you disagree with the denial of benefits, you should discuss the reason for denial with your employer or your employer's insurance carrier. If, after having this discussion, you are not satisfied that benefits were properly denied, you may contact an attorney for legal advice, or contact an ombudsman at the Indiana Workers' Compensation Board for information at (317) 232-3808. Additional information can also be found at www.in.gov/wcb.

EMPLOYER CERTIFICATION

Employer must sign below to certify service of this notice.

Signature of employer	Date *(month, day, year)*

Printed name	By: ☐ US Mail ☐ Personal service

REPORT OF TEMPORARY TOTAL DISABILITY (TTD) / TEMPORARY PARTIAL DISABILITY (TPD) TERMINATION

State Form 38911 (R8 / 1-14)

INDIANA WORKER'S COMPENSATION BOARD
402 West Washington Street, Room W196
Indianapolis, IN 46204
Telephone: (317) 232-3808
www.in.gov/wcb

* Your Social Security number is being requested by this state agency in accordance with IC 22-3-4-13; disclosure is voluntary, and you will not be penalized for refusal.

INSTRUCTIONS: 1. *You must report all compensation payments on this prescribed form. (IC 22-3-3-7)*
2. *Mail to the Worker's Compensation Board at the above address.*

Date of injury *(month, day, year)*	Accident number

CLAIM INFORMATION

Name of employer	Federal identification number	Telephone number ( )
Address of employer *(number and street, city, state, and ZIP code)*		
Name of insurer		Insurer claim number
Address of insurer *(number and street, city, state, and ZIP code)*		
Name of adjuster / case manager	Telephone number ( )	E-mail address
Name of employee		Employee Social Security number *
Address of employee *(number and street, city, state, and ZIP code)*		
Telephone number ( )	E-mail address	

BENEFIT TERMINATION / REDUCTION *(check all that apply)*

☐ In accordance with IC 22-3-3-7 (c), TTD/TPD benefits have been terminated due to the following *(check all that apply)*:
- ☐ The employee has returned to **ANY** employment;
- ☐ The employee has died;
- ☐ The employee has refused to accept suitable employment under Section 11 (IC 22-3-3-11);
- ☐ The employee has refused to undergo a medical examination under Section 6 (IC 22-3-3-6);
- ☐ The employee has received five hundred (500) weeks of TTD benefits or has been paid the maximum compensation allowed under IC 22-3-3-22;
- ☐ The employee is unable or unavailable to work for reasons unrelated to the compensable injury.
- ☐ Other ***(IF CHECKED, MEDICAL DOCUMENTATION MUST BE SERVED ON INJURED PARTY.)***
  - ☐ TTD benefits shall be terminated and Temporary Partial Disability (TPD) begun because employee has been released to part time work suitable to employee's disability.
  - ☐ Employer intends to terminate TTD/TPD benefits on _____ *(must be at least four (4) days after mailing or two (2) days after personal service)* because:
    - ☐ Treating physician has released employee to full time light duty work and employer has appropriate light duty work available.
    - ☐ Treating physician finds employee has reached MMI and/or employee is released to full time work *(check one)*:
      - ☐ With restrictions ☐ Without restrictions

Explanation

COMPENSATION PAYMENTS

Average weekly wage	Number of weeks paid	Weekly rate	Start date of payments (*month, day, year*)	End date (*month, day, year*)
$		$		

Total amount paid	*Check one.*	Reason(s) for ending payments
$	☐ Employee ☐ Dependent	

EMPLOYEE'S OBJECTION TO TERMINATION OF TTD BENEFITS

If the employee disagrees with the proposed benefit termination, the employee must complete, sign and return a copy of this notice to the **Worker's Compensation Board** and **the employer** within **seven (7) days** after receipt. This notice can also be filed via the Dispute Termination of Benefits link on the Board's website.

Please check all that apply.
☐ Employee disagrees with the termination / reduction of benefits. ☐ Employee requires further medical care.
☐ Employee believes an independent medical examination (IME) may be helpful to resolve this dispute.

Explanation

EMPLOYER CERTIFICATION / RECEIPT OF EMPLOYEE / DEPENDENT

Employer and employee must sign below to certify service or acknowledge receipt of this notice.
I certify that the foregoing is true and that a copy of the relevant medical documentation is attached.

Signature of employer	Date of service (*month, day, year*)
Printed name	By *(check one)*: ☐ US Mail ☐ Personal service
Signature of employee	Date received (*month, day, year*)
Printed name	By *(check one)*: ☐ US Mail ☐ Personal service

APPLICATION FOR ADJUSTMENT OF CLAIM

State Form 29109 (R5 / 6-05)

FOR STATE USE ONLY

Application number

INDIANA WORKER'S COMPENSATION BOARD
402 W. Washington St., Rm. W196
Indianapolis, IN 46204-2753

INSTRUCTIONS: *Please TYPE or PRINT.*
File ***ORIGINAL*** *and* ***4 COPIES****.*

* The request for your Social Security number is VOLUNTARY and you will not be penalized for refusing to supply it.

Name of plaintiff / employee			Name of defendant / employer
Address (*number and street*)			Address (*number and street*)
City, state, ZIP code		**vs.**	City, state, ZIP code
Telephone number ( )	Social Security number *		Telephone number ( )
Employer's Worker's Compensation insurance company (*if known*)			

The undersigned petitioner respectfully requests a hearing before a member of the Board for the following reasons. (*please check one*)

☐ Worker's Compensation Claim ☐ Occupational Disease Claim ☐ Change of Condition

ATTENTION: ONLY ONE INJURY DATE PER FORM

Date of injury / last exposure / death	Date employer notified of illness / injury / death	If not within 30 days explain
Actual location of incident (*number and street, city, state, ZIP code*)		County of incident
Average weekly earning of the employee at the time of illness / injury / death $		
Briefly describe how the accident / exposure occurred.		

If an employee has died as a result of the injury / exposure, complete this section for all persons surviving as all and only dependents. (*attach extra information on depenedents if needed*)

NAME	AGE	RELATIONSHIP	WHOLLY OR PARTIALLY DEPENDENT	ADDRESS

Comments or additional information that you feel is pertinent to this claim.

Name of attorney	Attorney number
Address (*number and street, city, state, ZIP code*)	
Telephone number ( )	

Signature of petitioner

SIGN HERE

Date signed (*month, day, year*)

APPLICATION FOR ADJUSTMENT OF CLAIM FOR PROVIDER FEE

State Form 18487 (R7 / 1-15)
Approved by State Board of Accounts, 2015

WORKER'S COMPENSATION BOARD
402 West Washington Street, Room W196
Indianapolis, IN 46204-2753
Telephone: (317) 232-3808

FOR STATE USE ONLY
Application number

INSTRUCTIONS:
1. *The application must file an original and two (2) copies of this application for it to be processed.*
2. *Mail to the Worker's Compensation Board at the above address.*
3. *For detailed instructions, go to www.in.gov/wcb/files/Provider_Memo.pdf.*

PLAINTIFF vs DEFENDANT

Name of plaintiff *(provider)*			Name of defendant *(employer)*	
Address *(number and street)*			Address *(number and street)*	
City, state, and ZIP code			City, state, and ZIP code	
Telephone number ( )	National Provider Identification number (NPI)		Telephone number ( )	Federal identification number
Name of attorney *(must complete)*		**vs**	Name of insurance carrier	Insurance claim number
Address *(number and street)*			Address *(number and street)*	
City, state, and ZIP code			City, state, and ZIP code	
Telephone number ( )	E-mail address		Name of adjuster	
Attorney number			Telephone number ( )	E-mail address
			Billing review company	
			Name of reviewer	
			Telephone number ( )	E-mail address

Must check one: ☐ Total Billing *(no payment received)*
☐ Balance Billing *(partial payment received)*
☐ Single ☐ Bundled

For Balance Billing *(A $60.00 filing fee must accompany the application.)*:
Check number: _____

THE PLAINTIFF RESPECTFULLY REPRESENTS TO THE BOARD AS FOLLOWS:

That the defendants, as employer and employer's compensation insurance carrier, owe and are indebted to the plaintiff on account in the sum of _____ dollars for provider's fee and supplies in the treatment of the injuries of _____
Name of patient

incurred as a result of an injury / illness arising out of and in the course of the employment with the defendant employer, on the _____ day of _____ , 20 _____ , in the county of _____ .

The patient's date of birth is *(month, day, year)*: _____

The patient's address is *(number and street, city, state, and ZIP code)*: _____

Latest date of service *(month, day, year)*: _____

That said services were rendered as follows *(check all that apply)*:
☐ In an emergency
☐ The employer failed to provide such service
☐ The employee was in need of timely services provided
☐ Employer or insurance carrier approved such services

Provider first requested payment for said services on *(month, day, year)*: _____

The applicant certifies that required diligence has been accomplished and that the initial written response from the employer / representative was received on *(month, day, year)*: _____

Additional date(s) demands made *(month, day, year)*: _____

Date(s) of follow-up *(month, day, year)*: _____

Type of second request: ☐ Oral ☐ E-mail ☐ Written Date(s) *(month, day, year):* _____

Wheretofore the plaintiff prays to the Board to find against the defendant on said account the sum of $ _____ .

Signature of plaintiff	Date signed *(month, day, year)*

EMPLOYEE WAIVER OF EXAMINATION BY PERSONAL PHYSICIAN

State Form 53913 (4-09)

INDIANA WORKER'S COMPENSATION BOARD
402 West Washington Street, Room W196
Indianapolis, IN 46204

INSTRUCTIONS: Please have claimant complete this form.
Submit together with Agreement to Compensation (Form 1043).

I have read the report of Dr. _____, dated the ____ day of _____, 20___, and understand that this medical opinion states that I have a _____% permanent partial impairment of the _____ as a result of injuries sustained in the above mentioned accident.

I, _____, understand that, pursuant to the Workers Compensation Act of Indiana, I have the right to have an examination by a qualified physician of my choice, at my own expense, for the purpose of determining what degree of permanent partial impairment, if any, I may have as a result of injuries suffered on the _____ day of _____, 20____, while in the employ of _____. I understand that any impairment rating obtained from such an examination is not binding upon the employer or insurance carrier, although it may be taken into consideration.

I do not wish to have an examination by a physician of my own choice and I hereby accept and agree with the opinion of Dr. _____ concerning the extent of my permanent injuries as described in the attached report. I understand that this waives only my right to an examination by a physician of my own choosing regarding this particular settlement.

Signed and dated this _____ day of _____, 20____.

X_____
Signature of Employee

REQUEST FOR ASSISTANCE

State Form 45442 (R2 / 5-06)

INDIANA WORKER'S COMPENSATION BOARD
OMBUDSMAN DIVISION
402 West Washington Street, Room W196
Indianapolis, Indiana 46204
Telephone: (317) 232-3808
Toll free: (800) 824-COMP

INSTRUCTIONS: *1. Please print or type*
2. Return completed request to the address listed at right.

EMPLOYEE INFORMATION	**EMPLOYER INFORMATION**
Name of employee	Name of employer
Address (*number and street*)	Address (*number and street*)
City, state, and ZIP code	City, state, and ZIP code
Telephone number ( )	Telephone number ( )
Social Security number *	County of employment
Date of birth (*month, day, year*)	**WORKER'S COMPENSATION INSURANCE COMPANY INFORMATION**
Date of accident (*month, day, year*)	Name of company
Nature of injury:	Address (*number and street*)
Have you hired an attorney? **	City, state, and ZIP code
If Yes, name and telephone number of attorney	Telephone number ( )
	Contact person(s)

Briefly describe your complaint / dispute (*attach additional sheets if necessary*):

I hereby request the Ombudsman Division of the Worker's Compensation Board to investigate my complaint. I understand that the Ombudsman Division is not a replacement for legal counsel, and that any specific legal questions should be addressed to my attorney.

Signature of employee	Date (*month, day, year*)

* PRIVACY NOTICE: This agency is requesting disclosure of your Social Security number in accordance with IC 22-3-4-13. This disclosure is not mandatory and you will not be penalized for refusing.

** You have no obligation to employ legal counsel under the Indiana Worker's Compensation and Occupational Diseases Acts.

NOTICE OF SUSPENSION OF COMPENSATION AND/OR BENEFITS

State Form 54217 (R / 3-13)

INDIANA WORKER'S COMPENSATION BOARD
402 W Washington Street, Room W196
Indianapolis, IN 46204

Jurisdiction claim number

* PRIVACY NOTICE: This agency is requesting disclosure of your Social Security number in accordance with IC 22-3-4-13. This disclosure is not mandatory and you will not be penalized for refusing.

NOTICE is hereby given that the employer intends to suspend compensation and/or benefits for a compensable injury under the Indiana Worker's Compensation Act for the reason listed below.

EMPLOYER AND CARRIER INFORMATION

Name of employer	Federal Identification number
Address *(number and street, city, state, and ZIP code)*	
Name of Insurance Carrier / Third Party Administrator	Claim number of insurer
Address *(number and street, city, state, and ZIP code)*	

ADJUSTER / ATTORNEY INFORMATION

Name of adjuster / attorney *(typed or printed)*		
Address (*number and street, city, state, and ZIP code*)		
Telephone number ( )	Fax number ( )	E-mail address
Signature of adjuster / attorney		Date signed *(month, day, year)*

EMPLOYEE INFORMATION

Injured workers shall not receive temporary total or partial disability payments, death benefits, employer directed treatment, or partial impairment payments, reimbursement for unauthorized medical care, and may not be entitled to have a case heard, until such refusal ceases.

Name of employee	Social Security number*
Address (*number and street, city, state, and ZIP code*)	Telephone number ( )
Date suspension initiated *(month, day, year)*	Date of injury *(month, day, year)*

Reason compensation and/or benefits are being suspended:

- ☐ Refusal of treatment, services and supplies (IC 22-3-3-4(c)) / (IC 22-3-3-7)
- ☐ Refusal or obstruction of examination (IC 22-3-3-6(a))
- ☐ Refusal to accept suitable employment (IC 22-3-3-11)
- ☐ Refusal of Board ordered autopsy (IC 22-3-3-6(h))

Actions required to have compensation and/or benefits reinstated

Signature of employee acknowledging receipt	Date signed *(month, day, year)*

DISTRICT	BOARD MEMBER	COURT REPORTER	CASE COORDINATOR	CONTACT
1	SANDRA OBRIEN	LAURIE KRIEGER	GINA DAVIES	(317) 233-3908
2	A JAMES SARKISIAN	PENNE HART	BETH WALLACE	(317) 233-3908
3	DANIEL FOOTE	JOYCE EMERSON	GINA DAVIES	(317) 233-3908
4	DIANE PARSONS	TAMARA DUVALLMC	BETH WALLACE	(317) 233-3908
5	DOUG MEAGHER	MARLANA HAIG	KYRA DAVIS	(317) 233-5397
6	KYLE SAMONS	KIMRA KELSAY	KYRA DAVIS	(317) 233-5397