

IMPROPER ACCIDENT INVESTIGATION: IT'S COSTING YOU MONEY

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Nick Thompson, JD
Katie Hensley, AIC
Sarah Olson

AGENDA

1. Introduction
2. Direct v. Indirect Cost of Claims
3. A Claim Scenario
4. Premium Impact
5. Accident Investigation and Future Claim Prevention
6. Accident Investigation and Liability Claims
7. Questions

OUR PANEL TODAY...



The One Who Loves Construction

EMILY GLANZ, AAI, CRIS
Emily is a Property, Casualty, and Workers' Compensation Producer in the Risk Management Department at Cottingham & Butler. Emily is passionate about the needs and goals of her clients, and she specializes in bringing peace of mind to those who are in need of protecting their business. She has nearly 10 years of sales expertise and is excited to provide customers with custom-tailored insurance services for a business's ever-evolving needs.



The One Who Is A Former Claims Adjuster

KATIE HENSLEY, AIC
Katie is the Brokerage Claims Manager in the Risk Management Division at Cottingham & Butler. Having extensive claims-handling experience, Katie is responsible for delivering valued Workers' Compensation claim reviews that focus on reserve reduction and claim closure, impact to Experience Modification Factor, and impact on dividend/loss sensitive adjustment.



The One Who Is An Attorney

NICK THOMPSON, JD
Nick Thompson is responsible for the delivery of services to Cottingham & Butler's clients. As Director of Client Services, Nick oversees our client service team, which includes our account management, customer service, claims, and safety teams. Nick has extensive insurance industry and law practice experience. Prior to earning his law degree from DePaul University College of Law, Nick led a team of claims adjusters for a large insurer. Nick also worked in private law practice for five years, focusing his practice on business law, as well as the defense of liability claims.



The One Who Is A Certified Safety Trainer

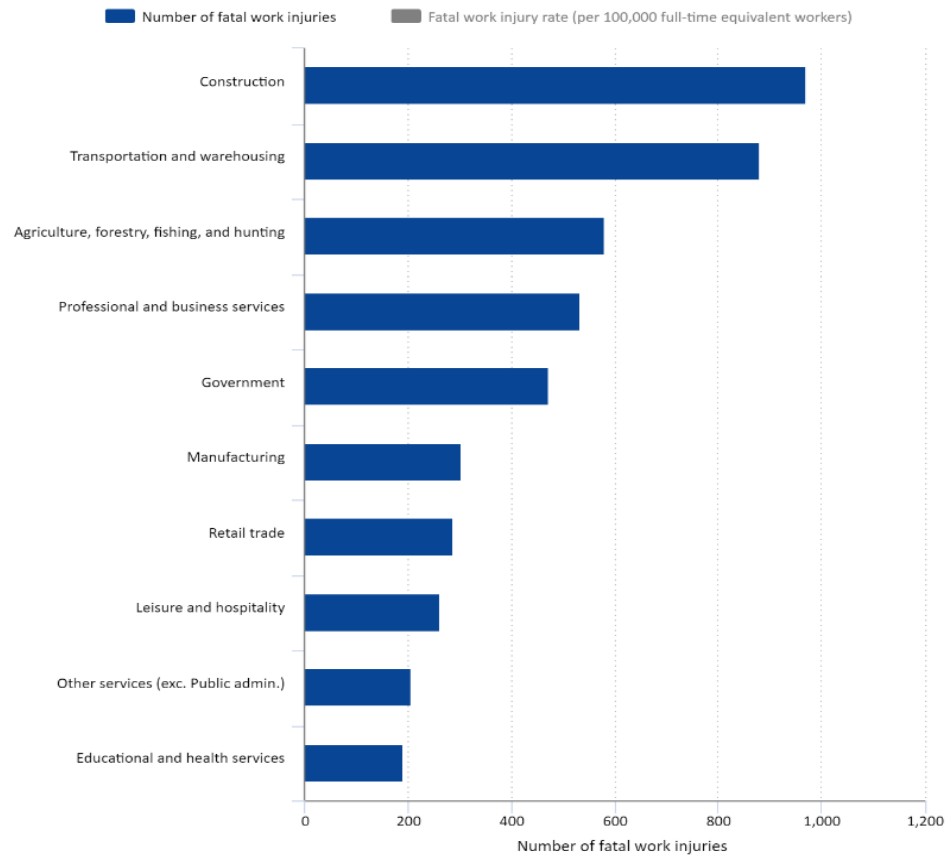
SARAH OLSON, SAFETY CONSULTANT
Sarah specializes in safety leadership training and risk solutions for companies focusing on engaging management in leadership behaviors to continuously improve safety cultures. Sarah engages clients with their current activities and develops strategies with the client to reduce potential incidents from occurring. Sarah is an authorized OSHA Outreach Trainer in the 10- and 30-hour general industry courses.

WHAT DOES THE COST OF CLAIMS HAVE TO DO WITH ACCIDENT INVESTIGATION?

- A good accident investigation can reduce your total cost in a couple of ways:
 - The claim at issue (compensability, severity of injury, subrogation, etc.)
 - Prevent future similar claims from occurring.
- We will start with the role of accident investigation as to an accident that has occurred.
- We will then talk about accident investigation as a tool to prevent future similar accidents.



CONSTRUCTION INDUSTRY



**Data from the Bureau of Labor Statistics*

<https://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm>

COST



total in 2017 ---- **\$161.5 billion**



per worker ----- **\$1,100**



per death ----- **\$1,150,000**



per medically consulted injury ----- **\$39,000**



**Data pulled from the National Safety Council Injury Facts*
<https://injuryfacts.nsc.org/work/costs/work-injury-costs/>

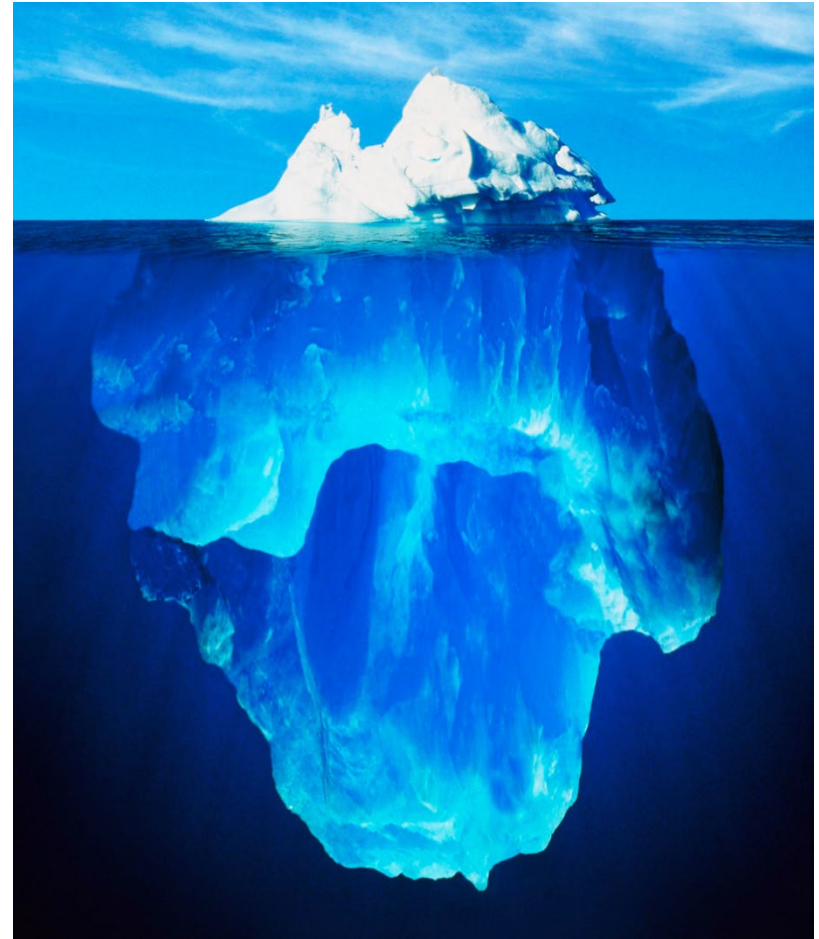
ICEBERG OF WORKPLACE INJURY COSTS

Direct Costs

- Increased Premiums Paid
- Medical Expenses
- Time off Wages

Indirect Costs

- Damage to Equipment & Machinery
- Damage to Materials & Facility
- Production Downtime
- Lower Employee Morale
- Loss of Product or Services
- Delays in Shipment or Filling Orders
- Additional Overtime
- Additional Temporary Workers
- Cost to Hire /Train New Workers
- Management Lost Time to Deal with Situation and Post Situation Follow-up
- Employees Assisting with Accident
- Potential OSHA Penalties
- Attorney Fees



LET'S DO SOME MATH!

Direct Cost of Injury

(Average Work Related Injury- 2017) \$39,000

Indirect Cost of the Injury

(Direct Cost x 1.1)* \$42,900

Total Cost of the Injury

(Total Cost = Direct Cost + Indirect Cost) \$81,900

Profit Margin of Business (%) 10%

Revenue Required to Offset Loss **\$819,000**

Revenue Required = (Total Cost)

/ (% Profit Margin/100)



**Indirect cost multiplier used by OSHA: <https://www.osha.gov/dcsp/smallbusiness/safetypays/estimator.html>*

LEVEL SET: EMPLOYER'S GOALS

- Claims are handled accurately:
 - Legitimate claims are handled quickly and fairly
 - Fraudulent claims are exposed with no payments made
- Prevent repeat mistakes
 - Don't let the same set of circumstances arise again and cause another injury
- Drive down your total cost of risk.



CLAIM INVESTIGATION

ROOT CAUSE VS. COMPENSABILITY & CAUSATION



CLAIM SCENARIO



IMPACT ON THE E-MOD

| State | Loss Policy Date | Claim Identifier | Claimant | Total Claim Amount | Reserves Only | TOTAL CLAIM | | RESERVES EFFECT | | |
|-------|------------------|------------------|-----------------|--------------------|---------------|----------------|-------------------|-----------------|-------------------|---------------|
| | | | | | | Adjusted Claim | Effect On Premium | Effect On Mod | Effect On Premium | Effect On Mod |
| KS | 2017 | | Timothy Roberts | \$60,400 | \$60,000 | \$60,400 | \$23,414 | 0.1658 | \$23,360 | 0.1655 |
| KS | 2017 | | Chad Adams | \$225,500 | \$175,500 | \$225,500 | \$45,608 | 0.3231 | \$38,887 | 0.2754 |
| KS | 2016 | | | \$60,000 | \$10,000 | \$60,000 | \$23,360 | 0.1655 | \$10,341 | 0.0732 |
| KS | 2016 | 34T5Y4T3 | TOM | \$250 | \$0 | \$250 | \$259 | 0.0018 | \$0 | 000000 |
| KS | 2016 | 3459tyu | Tim Morrison | \$75,000 | \$25,000 | \$75,000 | \$25,376 | 0.1797 | \$18,655 | 0.1321 |
| KS | 2015 | 24525235 | Dont Forget | \$400 | \$0 | \$120 | \$124 | 0.0009 | \$0 | 000000 |
| KS | 2015 | 7687667886 | Never Letgo | \$2,620 | \$2,300 | \$2,620 | \$2,709 | 0.0192 | \$2,378 | 0.0168 |
| KS | 2015 | 345245345 | Always Ontop | \$17,090 | \$12,000 | \$17,090 | \$17,591 | 0.1246 | \$12,409 | 0.0879 |
| KS | 2015 | 543453245 | Number One | \$5,500 | \$4,500 | \$5,500 | \$5,687 | 0.0403 | \$4,653 | 0.0330 |
| KS | 2015 | 886876987 | Tim Johnson | \$50,000 | \$32,000 | \$50,000 | \$22,016 | 0.1559 | \$19,596 | 0.1388 |

CLAIMS AND PREMIUMS

SINGLE STATE NCCI SAMPLE

Final Analysis

Each year the number of claims you average are: 2.6

You average annual losses from claims are: \$114,959

The average annual premium you have paid is: \$232,800

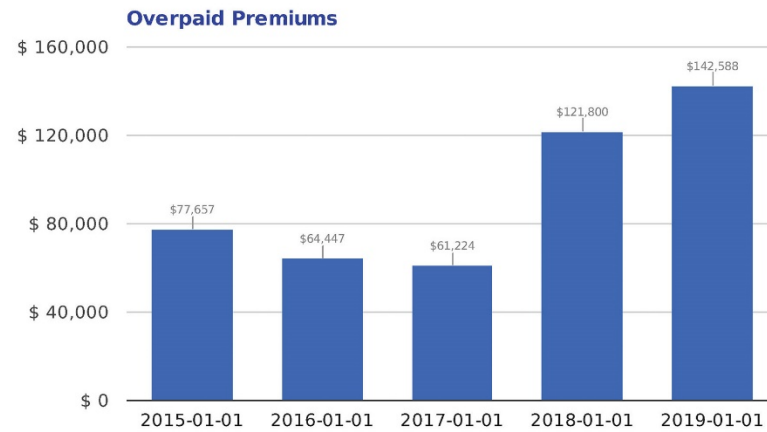
Your annual average Experience Mod is: 1.1

Your average loss ratio is: 54.04%

Annually you over pay premiums on average by: \$80,552

Your projected experience mod with no additional claims is approx: 1.11

CLAIMS AND PREMIUMS OVER TIME



Your claims over the past 5 years have resulted in excess premiums in the amount of:

\$467,716

ACCIDENT PYRAMID



SAFETY INVESTIGATION GOALS

- Identify the cause(s) to help prevent reoccurrence
- Identify trends or problem areas
- Permit comparisons on safety performance
- Satisfy workers' compensation and other legal requirements
- Identify (without placing blame) the basic causal factors that contributed directly or indirectly
- Identify deficiencies in management systems
- Suggest corrective action for:
 - Management system
 - Incident

OSHA

Fines

- Over 1000 OSHA Construction inspections in Illinois (Jan – Sept 2019)
- 2018 Largest Illinois Construction Citation - \$120,930

Time

- Sub paperwork
- Accountability
- Audit training (who was supposed to train on the items)



Downtime

Unsafe company reputation

- Media

Budget/timing to buy products versus having to buy immediately

How to keep OSHA out of your doors

MOST FREQUENTLY CITED OSHA STANDARDS - OSHA

OSHA's website provides information regarding the most frequently cited standards

Click: Frequently Cited OSHA Standards to view current data

- “Select number of employees in establishment,” select ALL or one of the options listed
- “Federal or State Jurisdiction,” select Federal or, from the dropdown menu, a specific state
- “NAICS,” enter ALL for all Industry groups, or enter a valid 2 to 6 digit code for a specific Industry from the NAICS Manual
- Shown are search results for: All sizes of establishments, in Federal jurisdiction, with a Construction NAICS code of “23”

UNITED STATES DEPARTMENT OF LABOR
OSHA
Occupational Safety & Health Administration
We Can Help

Frequently Cited OSHA Standards

This page allows the user to list the most frequently cited Federal or State OSHA standards for a specified 6-digit North American Industry Classification System (NAICS) code. Also available is [Industry Profile for OSHA Standards](#) which lists NAICS classifications having the most occurrences of citations for a specified OSHA standard.

Select number of employees in establishment:
All 1-9 1-19 1-99 20-49 50-99 100-249 1-249 250+

Federal or State Jurisdiction: Federal NAICS: (Submit empty for NAICS list.)

Submit

The data shown reflects OSHA citations issued by the Federal or State OSHA during the specified fiscal year; see [definitions](#). If you are interested in obtaining the NAICS code for a particular industry, references are available on the [NAICS Manual](#). This manual contains descriptions of every NAICS sector.

NAICS Code: 23 Construction

Use the table below to view the standards which were cited by Federal OSHA for the specified NAICS Code during the period October 2012 through September 2013. Penalties shown reflect current rather than initial amounts. For more information, see [definitions](#).

| Standard | Citations | Inspections | Penalty | Description |
|----------|-----------|-------------|--------------|---|
| Total | 36,962 | 14,785 | \$63,364,196 | All Standards cited for Construction |
| 19260501 | 7,849 | 7,589 | \$19,876,277 | Duty to have fall protection. |
| 19260451 | 5,047 | 2,337 | \$9,020,334 | General requirements. |
| 19261052 | 3,184 | 2,522 | \$4,259,552 | Ladders. |
| 19260502 | 2,093 | 2,041 | \$1,891,722 | Training requirements. |
| 19260102 | 1,143 | 1,139 | \$1,505,696 | Eye and face protection. |
| 19261200 | 1,142 | 635 | \$471,054 | Hazard Communication. |
| 192601 | 1,097 | 1,097 | \$1,502,875 | Head protection. |
| 19260752 | 972 | 859 | \$1,728,872 | Aerial lifts. |
| 19260651 | 948 | 606 | \$2,126,971 | Specific Excavation Requirements. |
| 19260020 | 933 | 793 | \$1,273,680 | General safety and health provisions. |
| 19100134 | 732 | 375 | \$462,792 | Respiratory Protection. |
| 19260404 | 725 | 628 | \$718,547 | Wiring design and protection. |
| 19260502 | 723 | 539 | \$1,026,627 | Fall protection systems criteria and practices. |
| 19260502 | 723 | 429 | \$551,852 | Utility methods, components, and equipment for general use. |

Common Most Frequently Cited Standards:

Fall Protection; Hazard Communication; Scaffolding; Respiratory Protection; Electrical; Powered Industrial Trucks; Ladders

CITATIONS AND PENALTIES

| VIOLATION TYPE | PENALTY (Jan. 2019) |
|--|---|
| WILLFUL A violation that the employer intentionally and knowingly commits or a violation that the employer commits with plain indifference to the law. | OSHA may propose penalties of up to \$135,598 for each willful violation, with a minimum penalty of \$5,000 for each willful violation. |
| SERIOUS A violation where there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. | There is a mandatory penalty for serious violations which may be up to \$13,260 . |
| OTHER-THAN-SERIOUS A violation that has a direct relationship to safety and health, but probably would not cause death or serious physical harm. | OSHA may propose a penalty of up to \$13,260 for each other-than-serious violation. |
| REPEATED A violation that is the same or similar to a previous violation. | OSHA may propose penalties of up to \$135,598 for each repeated violation. |

DON'T LOSE SIGHT OF LEGAL CONSIDERATIONS

- Despite your best intentions, beware of producing a document that can be used against you in “discovery”
- The same considerations that should drive you to investigate and prepare a report relating to a WC loss apply to liability losses – freeze facts, gather witness mental impressions, prevent same type of loss from happening again
- BUT, you must be mindful and take precautions to prevent an accident investigation report from becoming discoverable (especially if the facts aren't great!)



WHAT DO COURTS SAY ABOUT ACCIDENT INVESTIGATION REPORTS?

- Courts have gone different directions on this
- Best way to maximize your chances of protecting the document:
 - Show that the investigation was conducted for LEGAL (anticipation of litigation) reasons rather than in the ordinary course of your business
 - Legal (in-house or outside counsel) should direct the investigation and should absolutely be provided a copy of the investigation report
 - Needs to plausibly have been prepared for the purpose of seeking legal advice, not just as a matter of routine



DISCOVERABILITY ISSUES – LIABILITY CLAIMS

Need protection of the “attorney-client privilege” or “work-product doctrine” to prevent a liability accident investigation report from becoming discoverable.

- **Attorney-client privilege:** Generally, need to show that the communication originated in confidence that it would not be disclosed, was made to an attorney acting in his or her legal capacity for the purpose of securing legal advice or services, and remained confidential.
- **Work-Product Doctrine:** Generally, protects documents prepared by an attorney or the attorney’s agent in anticipation of litigation for purposes of analyzing, evaluating, and preparing a client’s case.

WORKERS' COMPENSATION – LEGAL CONSIDERATIONS

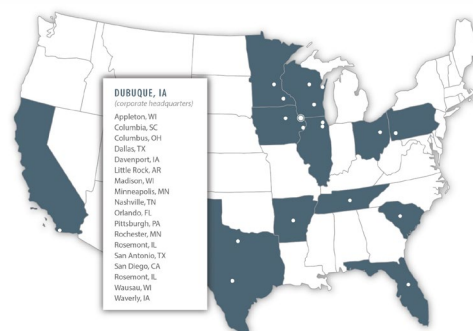
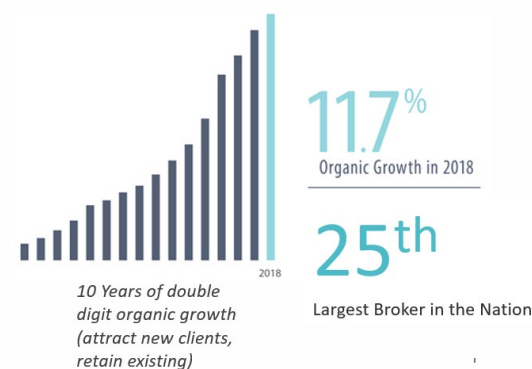
- Not a lot of discovery in Illinois Workers' Compensation.
 - Makes it extremely important that you gather as many facts as possible UP FRONT.
- Written witness statements can be extremely helpful
 - Also consider video recording these statements.
- Subrogation – Unlike WC, recovery is fault based.
 - Documenting the facts that give rise to another's negligence should be done at time of incident (not when the carrier's adjuster starts thinking about months down the road)

CLAIM BEST PRACTICES

- Freeze the facts
- Interviews should be conducted as soon as possible
- Remove the emotion
- Communicate

ABOUT US

- National provider of risk management solutions, employee benefits, and safety solutions (Safety Management Services Company “SMSC”)
- Privately held - established in 1887
- Headquarters in Dubuque, IA ; national footprint
- Over 3,500 customers nationwide
- 1,000+ employees
- 25th largest Insurance Broker in U.S. (out of 38,000)
- 95% retention rate across entire book of business
- 10 Years of double digit organic growth (attract new clients, retain existing)



Business Insurance
100 LARGEST
BROKERS
OF US BUSINESS

Thank you for coming today

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