



The Impact of Attorney Involvement on Injured Workers

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SUMMARY

Litigation in workers' compensation has become a systemic problem. Some states are seeing the incident rates reach levels in excess of 50 percent of claims¹. The workers' comp system simply was not designed for this. In fact, quite the opposite. Workers' comp was created to remove the threat of litigation by waiving the employee's right to sue his or her employer for negligence, swapping it instead for a limited guarantee of care. Along the way, the system derailed, and the present impact of litigation on claims has forced costs to balloon. Care for injured workers has also suffered, and time spent away from jobs continues to drag on unnecessarily.

To remedy the situation, it is essential that the claims process gets back to a model that guarantees sufficient care for injured workers and eliminates, or at least significantly reduces, the need for litigation.

Systemic change will require more than a shift in mindset, however. Organizations need to adopt practical tools and strategies that stave off litigation. Before they are convinced to spend the time, money and effort to transform how they handle claims, they need data that proves there is a positive payoff. The purpose of this paper is to assist in creating a factual basis for determining the cost and effects of litigation, providing the impetus for action.

Study Design

To gain tangible insights into the impact of litigation, we conducted a study that examined 11 years of data from a single, national payer for injury years 2007–2017. The study focused on closed indemnity claims across multiple states. There were roughly 50,000 claims included in this sample. Analyses were controlled for numerous case mix factors (covariates) that are known to affect costs, temporary disability (TD) days, and/or claim duration, to arrive at the independent effect of attorney involvement (worker attorney, defense attorney or both) on these three outcomes.

Key Findings

Attorney involvement is associated with significant increases in all factors measured. Mean costs of claims are 388 percent more expensive, and median values are 739 percent more expensive when lawyers are involved. These claims also take 195 percent times longer to resolve and involve 284 percent more days of lost time from work.

The table below (Table 1) provides a summary of these findings.

| | Indemnity Claims with No Attorney (n=36,657) | Indemnity Claims with Attorneys (n=14,183) | Difference | p-Value |
|-----------------------|--|--|------------|---------|
| Average Cost | \$15,936 | \$77,807 | +388% | <.001 |
| Median Cost | \$5,768 | \$48,385 | +739% | <.001 |
| TTD Days | 49.5 | 190.1 | +284% | <.001 |
| Claim Duration | 305.4 | 900.6 | +195% | <.01 |

Table 1

These numbers clearly demonstrate that the present system does not work for anyone, except perhaps the lawyers. By reducing litigation and attorney involvement, direct claims costs dramatically decrease, claims teams can more effectively address the needs of injured workers, and workers themselves receive quality care through a better experience that gets them back to work faster.

Recommendation

The potential ROI for a program to reduce litigation is significant. Consider that each claim steered away from an engaged attorney saves roughly \$42,617 (based on the difference in median values) from direct claims costs.

Leveraging machine learning models is one way to immediately begin addressing the massive problems litigation presents. Easily deployable models can now provide a highly accurate signal to identify claims at risk for getting an attorney as a trigger for escalation, at which point a claims team can intervene to help the injured worker before he or she finds it necessary to hire a lawyer.

For example, a small regional carrier ran a six-month pilot using CLARA's litigation risk signal to identify claims that were escalated to a high-touch team consisting of senior level adjusters, nurses and legal experts. At the conclusion of the six-month period, they reported that their litigation rate went from 14 percent of all claims to 5 percent. This means that even a smaller carrier, with 20,000 claims per year, would save approximately \$42 million in claims costs if they were only half as successful as the pilot example.

Machine learning and AI-based solutions can help even when litigation is unavoidable. By utilizing outcomes-based attorney scoring powered by machine learning algorithms that identify the best attorneys for a case, claims teams can still dramatically reduce associated costs and resolve issues faster. AI also can lend insight on optimized settlements for specific cases, which can assist in the determination of whether to fight or settle a pending lawsuit. While these instances do not result in the same level of savings as avoiding attorney involvement altogether, the cost reduction is still substantial.

With the ability to tailor and streamline claims utilizing sound strategies and tools, injured workers receive the attention they deserve, which results in getting back to work faster and a better experience overall. The process functions as it was intended. This creates a true win-win opportunity for the workers' compensation system.

Complete Data and Research

It has been reported extensively that when attorneys are involved in lost time workers' compensation claims, those indemnity claims cost on average \$35,000-\$55,000 more than indemnity claims not involving an attorney^{2 3 4}. Attorney involvement also has been shown to be associated with a greater number of temporary disability (TD) days and a longer length of time required to close the claim. While costs generally are not a concern of the employee, the greater number of TD days and longer claim duration represent a direct impact of attorney involvement on the injured worker. Complete results of our analysis are found below.

Table 2 shows the attorney involvement rate by state for the top 20 states by volume in our dataset.

| State | Total Number of Claims | Number of Claims with Attorney Involvement | Attorney Involvement Rate |
|-------|------------------------|--|---------------------------|
| CA | 20,108 | 7,034 | 35% |
| FL | 3,762 | 1,381 | 37% |
| NV | 3,124 | 557 | 18% |
| IL | 2,868 | 1,266 | 44% |
| WI | 2,400 | 113 | 5% |
| GA | 2,175 | 719 | 33% |
| TX | 2,066 | 176 | 9% |
| TN | 1,593 | 397 | 25% |
| IN | 1,570 | 250 | 16% |
| CO | 1,221 | 242 | 20% |
| NC | 1,175 | 328 | 28% |
| SC | 1,168 | 446 | 38% |
| KY | 995 | 177 | 18% |
| MN | 972 | 150 | 15% |
| MT | 889 | 12 | 1% |
| VA | 845 | 129 | 15% |
| ID | 841 | 155 | 18% |
| UT | 676 | 61 | 9% |
| MO | 533 | 225 | 42% |
| AZ | 52 | 19 | 4% |

Table 2

There were 50,840 claims, 14,183 of which involved attorneys, giving an overall attorney involvement rate of 28 percent. The average total claim paid among claims without attorney involvement was \$15,936 and \$77,807 among claims with attorney involvement. The medians were \$5,768 and \$48,385, respectively. The mean claim duration overall was 471 days; 305 days among claims without attorney involvement and 901 days among claims with attorney involvement. The medians were 190 days and 743 days, respectively.

At the state level, the attorney involvement rate ranged from a low of 1 percent in Montana to a high of 44 percent in Illinois. The 35 percent attorney involvement rate for California is consistent with the findings of previous studies^{2,3}.

Table 3 shows the mean total claim paid with and without attorney involvement by state as well as the multiple in total claim paid associated with attorney involvement.

| State | Mean Total Claim Paid without Attorney Involvement | Mean Total Claim Paid with Attorney Involvement | Total Claim Paid Multiple Associated with Attorney Involvement |
|-------|--|---|--|
| CA | \$11,674 | \$84,244 | 7.22 |
| FL | \$19,408 | \$73,232 | 3.77 |
| NV | \$13,929 | \$49,392 | 3.55 |
| IL | \$18,559 | \$71,413 | 3.85 |
| WI | \$18,234 | \$93,761 | 5.14 |
| GA | \$23,592 | \$69,981 | 2.97 |
| TX | \$15,796 | \$63,267 | 4.01 |
| TN | \$18,664 | \$63,805 | 3.42 |
| IN | \$21,056 | \$134,267 | 6.38 |
| CO | \$23,949 | \$43,895 | 1.83 |
| NC | \$18,577 | \$77,840 | 4.19 |
| SC | \$23,338 | \$63,344 | 2.71 |
| KY | \$16,073 | \$67,585 | 4.20 |
| MN | \$10,928 | \$80,641 | 7.38 |
| MT | \$20,183 | \$26,198 | 1.30 |
| VA | \$28,761 | \$140,374 | 4.88 |
| ID | \$16,537 | \$117,717 | 7.12 |
| UT | \$14,785 | \$57,445 | 3.89 |
| MO | \$11,416 | \$44,898 | 3.93 |
| AZ | \$22,037 | \$62,007 | 2.81 |

Table 3

Attorney involvement was associated with higher costs by a multiple ranging from 1.30 in Montana to 7.38 in Minnesota. The state with the highest average total claim paid was Virginia, with an average cost of \$28,761 for claims without attorney involvement and \$140,374 for claims with attorney involvement. The state with the lowest average total claim paid for claims without attorney involvement was Minnesota (\$10,928). For claims with attorney involvement, the state with the lowest average total claim paid was Montana (\$26,198).

Table 4 shows the average number of TD days by state with and without attorney involvement as well as the multiple in TD days associated with attorney involvement.

| State | Number of TD Days without Attorney Involvement | Number of TD Days with Attorney Involvement | TD Days Multiple Associated with Attorney Involvement |
|-------|--|---|---|
| CA | 57.7 | 233.6 | 4.05 |
| FL | 11.0 | 50.1 | 4.55 |
| NV | 53.7 | 174.1 | 3.24 |
| IL | 35.0 | 151.9 | 4.34 |
| WI | 18.4 | 108.7 | 5.89 |
| GA | 77.0 | 199.6 | 2.59 |
| TX | 47.9 | 244.6 | 5.10 |
| TN | 38.5 | 107.5 | 2.79 |
| IN | 16.6 | 79.7 | 4.79 |
| CO | 84.8 | 144.9 | 1.71 |
| NC | 58.2 | 233.2 | 4.01 |
| SC | 80.1 | 201.1 | 2.51 |
| KY | 35.3 | 146.6 | 4.16 |
| MN | 27.8 | 123.8 | 4.45 |
| MT | 73.7 | 95.3 | 1.29 |
| VA | 76.1 | 437.2 | 5.74 |
| ID | 53.1 | 314.5 | 5.93 |
| UT | 58.6 | 131.7 | 2.25 |
| MO | 26.7 | 64.8 | 2.43 |
| AZ | 84.5 | 222.8 | 2.64 |

Table 4

Attorney involvement was associated with a greater number of TD days by a multiple ranging from 1.29 in Montana to 5.93 in Idaho. The state with the fewest TD days was Florida, with 11.0 TD days on average among claims without attorney involvement and 50.1 TD days on average among claims with attorney involvement. The state with the greatest number of TD days among claims without attorney involvement was Colorado (84.8 TD days on average). The state with the greatest number of TD days among claims with attorney involvement was Virginia (437.2 TD days on average). Of note, Virginia had the second highest multiple in TD days associated with attorney involvement; with the number of TD days increasing from a couple of months without attorney involvement to well over a year when an attorney was involved.

Table 5 shows the average claim duration by state with and without attorney involvement as well as the multiple in claim length associated with attorney involvement.

| State | Mean Length of Claim without Attorney Involvement | Mean Length of Claim with Attorney Involvement | Claim Length Multiple Associated with Attorney Involvement |
|-------|---|--|--|
| CA | 322.3 | 1,138.9 | 3.53 |
| FL | 291.0 | 521.1 | 1.79 |
| NV | 265.9 | 707.5 | 2.66 |
| IL | 230.4 | 708.9 | 3.08 |
| WI | 280.5 | 1,071.4 | 3.82 |
| GA | 282.8 | 508.2 | 1.80 |
| TX | 321.0 | 847.8 | 2.64 |
| TN | 338.6 | 808.5 | 2.39 |
| IN | 266.7 | 741.5 | 2.78 |
| CO | 361.4 | 463.9 | 1.28 |
| NC | 323.3 | 635.3 | 1.97 |
| SC | 378.6 | 605.8 | 1.60 |
| KY | 348.7 | 955.5 | 2.74 |
| MN | 218.5 | 828.5 | 3.79 |
| MT | 384.0 | 566.1 | 1.47 |
| VA | 340.3 | 878.0 | 2.58 |
| ID | 305.1 | 998.2 | 3.27 |
| UT | 278.3 | 845.8 | 3.04 |
| MO | 249.3 | 574.5 | 2.30 |
| AZ | 308.6 | 799.3 | 2.59 |

Table 5

Attorney involvement was associated with a longer claim duration by a multiple ranging from 1.28 in Colorado to 3.82 in Wisconsin. The state with the shortest claim duration among claims without attorney involvement was Minnesota, with claims lasting 218.5 days on average. The state with the longest claim duration among claims without attorney involvement was Colorado, with claims lasting 361.4 days on average. The state with the shortest claim duration among claims with attorney involvement was Colorado (436.9 days on average). The state with the longest claim duration among claims with attorney involvement was California (1,138.9 days on average).

Conclusions

We embarked on this study to provide hard data that demonstrates the impact of litigation on the claims process. These numbers show unequivocally that across the country, when attorneys are involved, claims last longer, cost more and keep workers away from their jobs to an astonishing degree. This data should serve as a wake-up call to organizations that they can't afford and shouldn't want to continue along this path.

With new AI-based solutions that utilize machine learning, companies can reverse the trend of attorney involvement in workers' comp. By intervening in the claims process before a lawyer is called, finding the best attorney if one becomes necessary, and gaining the knowledge to negotiate a proper settlement when required, companies can save millions of dollars — and their employees have a better experience. It's time to get the workers' comp train back on track; it's time to move the workers' comp system into the future. Machine learning and AI are the key.

¹ Workers Compensation Research Institute (WCRI); Worker Attorney Involvement: A New Measure; By Rebecca (Rui) Yang, Karen Rothkin, Roman Dolinschi; May 18, 2017

² Gardner LB and Swedlow A. (May 2002). California Workers' Compensation Medical Payments, Litigation and Claim Duration—A Post-Reform Report Card. Oakland, CA: California Workers' Compensation Institute

³ Young B. (February 2014). Attorney Involvement in AY 2005–2010 California Workers' Compensation Claims. Oakland, CA: California Workers' Compensation Institute

⁴ Bernacki, EJ and Tao X. (September 2008). The Relationship Between Attorney Involvement, Claim Duration, and Workers' Compensation Costs. JOEM 50(9):1013–1018