



Managing the Costs of Workers' Comp

Workers' compensation claims in Canada have revealed an interesting pattern over the past decade. While the frequency of claims is down, severity is up – and this should be a source of concern for risk managers, not just human resources staff.

Between 2000 and 2008, the frequency of lost-time workers' compensation claims in Canada dropped steadily by over 20% (from over 392,000 to under 308,000), according to data from the Association of Workers' Compensation Boards. Over the same period, however, the severity of claims increased by approximately 30%. Therefore, individual employers who are filing lost-time claims have experienced a dramatic rise in the cost per claim.

There are two key demographic factors that help explain the latter trend of rising severity in claims. One is the aging workforce of baby boomers. As we get older, our bodies aren't recovering from injuries as quickly. Now that there's no mandatory retirement, workers over the age of 65 are still doing the same physically demanding job of 30 years ago. Nearly half of workplace injuries involve workers over 65.

Another more unfortunate explanation for the increasing severity of workers' compensation claims is the rising number of obese workers. Their medical costs are higher and their return to work is longer. They usually have a lot of other underlying medical factors that come into play as they try to return to work.

istock photo



Although the severity of claims is increasing and we are battling some major demographic issues, many employers do not realize that they can manage these costs to their advantage. Employers can earn rebates and/or be charged surcharges on top of their premiums based on how many claims they have in a year, how severe those claims are and how those numbers compare to their peers in the same industry group.

In short, there's a real incentive to be a good performer. More Canadian corporations need to have a better understanding of the financial impact and put processes in place to manage this risk.

The key is for employers to apply the

Inside

| | |
|--|---|
| Psychological side of claims | 3 |
| Global Day of Service | 4 |
| Onwards and Upwards | 5 |
| Common Claims Can Give Good Guidance | 6 |
| WICC booth at CRIMS 2010 | 7 |

... continued on page 2

Managing the costs of workers' comp *(continued from page 1)*

same principles to managing workers' compensation claims that are applied to managing any other type of claim in a traditional insurance product. This translates into having good health and safety policies and accident prevention programs to minimize the number of claims. It also means having and managing effective return-to-work programs to minimize time off work, and therefore the severity of claims.

After all, the human absence that results from workplace injury can cost an organization even more in the long run than typical physical risks. If you think of it from a frequency standpoint, how often does a plant burn down? But how frequently does someone not come into work? That happens on an almost daily basis.

Risk managers can and should have an impact in this area of an organization's total risk exposure. Instead of just talking or thinking about the sprinkler system in the plant, the fleet of vehicles or the liability exposure, think total risk. It includes all human risk, which extends to absenteeism, short-term and long-term disability and workers' compensation claims. The goal is to control the exposure and the indemnity, and mitigate the loss.

The goal is to control the exposure and the indemnity

We have clients who have told us that if one person is away, especially on a workers' comp claim, it costs them roughly \$1,000 a day. These costs include productivity, morale and hiring or training a replacement worker, as well as potential surcharges from the workers' compensation board. Several factors are starting to drive Canadian employers to examine these variable costs more closely and ask for help in how to manage these costs. At the same time, risk managers, not just HR people, are getting more involved in the analysis.

At least part of the change in approach has been driven by U.S. companies with operations in Canada. Because there is no public system of workers' compensation in the U.S., risk managers will handle the issue like any other risk transfer and purchase workers' comp insurance privately. U.S. risk managers roll human risk into their entire risk management package and also understand the value of data from all of their loss types. They know that tracking

We have clients who track equipment involved, product involved, time into shift, length of time that the employee has worked for the company, protective equipment involved, primary and secondary causes. The possibilities are endless and the value of that data is endless as well. Clients will change manufacturing processes, equipment and training for their employees all based upon the data that is collected and analyzed.

The value of the data is endless

For companies to get a better handle on managing their workers' compensation costs, the following steps should be followed:

1. Do a thorough analysis of your current workers' compensation processes including what happens when a claim occurs, staff level of knowledge and training of handling compensation claims, how both the injured

worker and the supervisor manage through the process.

2. Do a thorough financial analysis of your company's workers' compensation costs including rebates and/or surcharges, historical claims, claim severity and any trends that may be evident through the financial documents through the worker's compensation boards. Also ensure that you are in the correct rate category

3. Review your claims management processes with a particular view on:

- Accident investigations;
- Documentation prepared and delivered to the worker's compensation board; and
- The management of modified and transitional duties.

For more information on managing your workers' compensation costs and Cranford's Healthcare Management Services, please complete the reader response card.



thinkstockphotos

The psychological side of claims

More and more physical injury claims are accompanied by associated allegations of psychological or psychiatric impairment, particularly anxiety, stress and depression disorders. The courts have rendered judgments in several of these cases, but there is still uncertainty as questions emerge about psychological-related claims.

How “reasonably foreseeable” was the psychiatric injury caused to a plaintiff? What is expected of the average citizen’s state of mind or “fortitude and robustness,” as defined by courts in Canada? How should adjusters and risk managers deal with psychological claims?

“These claims have really opened up recently,” says Paul Famula, Manager of Legal Services, Crawford & Company (Canada) Inc. “The plaintiff’s bar has been creative in these kinds of psychological cases and, in some areas the courts are taking them very seriously. You can’t just ignore them.”

One landmark case heard by the Supreme Court of Canada was *Mustapha v. Culligan* (2008), the so-called “fly in the water bottle” lawsuit. Waddah “Martin” Mustapha had discovered a fly in his water cooler, supplied by Culligan. He claimed psychological trauma, including nervous shock and depression, and was originally successful when a trial judge awarded him \$341,000 in damages. Culligan appealed and the Ontario Court of Appeal dismissed the case. The plaintiff then appealed to the Supreme Court of Canada, which released its judgment in May 2008.

While the Supreme Court dismissed the appeal, it did find that Culligan owed a duty of care to Mustapha and that there was a breach of duty. It also stated that the plaintiff did suffer legitimate psychological damage. However, the Supreme Court held that “the law expects reasonable fortitude and robustness of its citizens and will not impose liability for the exceptional frailty of certain individuals.” It also ruled that Culligan could not be found liable as the company could not have “reasonably foreseen” the psychiatric injury suffered by the customer. The judgment was lauded by many legal professionals for its common sense approach.

More recent rulings, however, have



thinkstockphotos

clouded the issue. One example is *Frazer v. Haukioja* (2010). In this case, Grant Frazer lost control of his motorcycle and suffered injuries to both ankles. Dr. Haukioja initially diagnosed a left ankle fracture and a soft tissue injury to the right ankle. However, weeks later a radiologist examined the plaintiff’s x-rays and discovered a talar fracture in the right ankle. Although Dr. Haukioja discussed the results with the radiologist that day, he did not communicate the results to Frazer until a follow-up appointment six weeks later. At that time, he described the right ankle fracture as “tiny, barely visible and not requiring any further treatment.” However, Frazer, obtained information from two other doctors indicating the fracture was more serious.

When Frazer realized the full extent of his injuries, he became focused on Dr. Haukioja’s alleged misdiagnosis and the delay in informing him of the injury’s

severity. Frazer saw a psychiatrist, who found that Frazer suffered from an anxiety disorder with features of panic disorder.

A trial judge found Frazer’s psychiatric diagnosis was the result of Dr. Haukioja’s failure to properly treat his patient. Frazer received damages of \$2,500 for non-disclosure, \$150,000 for psychiatric injury, \$283,378 for lost income, \$1.2 million for future lost income and \$14,911 for future care. The doctor appealed the award against him to the Ontario Court of Appeal. In its April, 2010 judgment, the appeal court upheld the original ruling.

“While there are a number of turns in this story, one can expect the courts to set the bar for ‘exceptional frailty’ from a psychological perspective quite high when there is a physical injury, be it minor in nature,” Famula says. “The courts have stated that the law expects ‘reasonable fortitude and robustness of its citizens.’

... continued on page 8

Employees engage in Global Day of Service

2



4



3



5



1



1. The Toronto Downtown event. Back row, from left to right: Devorah Lindsay, Debbie Nuga, Neil Gibson, Kavita Naraine, Val Heimpel, Silvana Facciolo. Sitting in front: Kristen Moskal and Vanessa Richard. 2. The Kitchener-Waterloo event. Ashley Karpowicz and Julie Anderson. 3. The Toronto West event. Maureen Roper and Amy Johnson. 4. The Ottawa event. Back Row, from left to right: Karen Nachia, Conar Marcoux, Lori Guimond, Paul Martin and Blair McLeod. Front Row, from left to right: Jane Mcseveny, Christine Garby, Michelle Dolan, Linda Savoie, Guy Savoie and Joy Dolan. 5. The Ottawa CCAS event. Back row, from left to right: Sean McNeely, Benoit Chiasson, Christopher Chow, Pierre-Luc Bouchard, Jean Dodge and Mathieu Wojcik. Front row, from left to right: Antonin Fortier, Carole Roy, Suzanne Niquette, Joan Fortier, Alana Spence, Carol Miller and Nancy Killam. 6. The Calgary event. From left to right: Bruce Sunderland, Janet Blenman, Teri Buchanan and Jean Sunderland.

6



On Saturday, October 2, 2010, Crawford & Company (Canada) Inc. employees participated in Crawford & Company's 2nd annual Global Day of Service. The Global Day of Service is an event in which Crawford employees from offices around the world volunteer in groups for a charitable cause of their choice. The event was a resounding success thanks to the 1,200 Crawford employees that participated across the globe. Volunteers planned 54 projects in 19 countries. Here in Canada, 12 projects were planned in the Vancouver, Calgary, Windsor, Toronto, Kitchener and Ottawa offices.

In Calgary and Ottawa, teams volunteered at the Mustard Seed Ministry and local missions where they prepared and served food to the homeless. In Windsor, downtown Toronto, Ottawa, Chatham and Toronto West, project coordinators and volunteers collected food for their local food banks in time for the Thanksgiving holiday. Volunteers from the downtown Toronto branch and The Economical Insurance Group Duty Desk participated in a Children's Aid Society event geared towards recent adoptive families, while volunteers in Kitchener-

Employees volunteer for a charitable cause of their choice

Waterloo planted trees in the "Crawford Forest" with the 10,000 Trees Project. In Vancouver, branch manager Evan Miles' team painted and made repairs to a women's shelter, and in Brampton and Orangeville, branch manager Balu Naidu and his team collected used clothing and items for the Covenant House (Canada's largest youth shelter). Those who gave blood throughout the year for the Canadian Blood Services were also recognized for taking time out of their busy schedules to help those undergoing various surgeries and treatments. With no shortage of activities and projects in which to participate, Crawford employees spent a busy Saturday giving back to their local communities.

Throughout the year, Crawford employees volunteer their time to local charities and not-for-profit organizations such as Big Brothers and Big Sisters, the Canadian Cancer Society, local Rotary Clubs, YMCA programs, Habitat for Humanity, soup kitchens and food banks. The daily individual efforts of these employees demonstrate that their commitment to the community and those in need is continuous. When these employees unite with others, the impact of their efforts is even greater. This is why participation in the Global Day of Service is so highly encouraged. Crawford makes an effort to provide its employees with an opportunity to get involved and make a difference, not only on a corporate level but on a personal level as well.

Onwards and upwards

John Sharoun, chief executive officer, Crawford & Company (Canada) Inc., is pleased to announce the following nominations within the company.

Evan Miles has been appointed operations manager, Western Canada. Evan will be responsible for assisting in a number of areas, including quality control, training and education, compliance and audit, CAT management and branch management support. Evan will also be participating in special projects as required. He will continue to be based in British Columbia.



Dave Lemire has been appointed to the position of branch manager for the Vancouver and area branches. Reporting to Evan Miles, Dave's new role will include responsibility for all Vancouver branches, including Surrey. Dave is a Chartered Insurance Professional (CIP) and has a wide range of claims handling experience.



NEW AND MOVING BRANCHES

Crawford is pleased to announce the expansion of the National Claims Services network with two new satellite branches in Prince George, BC and Alma, QC.

Fax: 905-821-8871
Manager: Mark Hale
Email: Mississauga.Claims@crawco.ca

Saguenay Region National Claims Services Branch

2321 du Chemin de la Montagne
Alma, Quebec G8B 5V2
Tel.: 418-480-1944
Fax: 418-480-2254
Manager: Yves Boissonneault
Email: Yves.Boissonneault@crawco.ca

Kitchener National Claims Services Branch

315-180 King St. S.
Waterloo, ON N2J 1P8
Tel: 519-571-0019
Fax: 510-571-1896
Manager: Mike Virley
Email: Michael.Virley@crawco.ca

Prince George National Claims Services Branch

PO Box 2093
Prince George, BC V2N 2J6
Tel: 250-612-1088
Fax: 604-739-3817
Manager: Robin Stevens
Email: Robin.Stevens@crawco.ca

Kitchener Healthcare Management Services Branch

315-180 King St. S.
Waterloo, ON N2J 1P8
Tel: 519-571-8499
Fax: 510-578-5658
Manager: Wendy Fitzpatrick
Email: Wendy.Fitzpatrick@crawco.ca

These branch offices have relocated to better serve clients. Please amend your records to reflect these new locations:

Mississauga Regional Claims Centre

900-40 Matheson Blvd.
Mississauga, ON L5R 3R3
Tel: 905-602-9511
Fax: 905-602-6956
Manager: Noel Dunne
Email: Noel.Dunne@crawco.ca

Orangeville National Claims Services Branch

B-45 Mill St.
Orangeville, ON L9W 2M4
Tel: 519-941-3791
Fax: 519-941-9031
Manager: Balu Naidu
Email: Balu.Naidu@crawco.ca

Mississauga National Claims Services Branch

900-40 Matheson Blvd.
Mississauga, ON L5R 3R3
Tel: 905-821-1131

Trois Rivières National Claims Services Branch

505-1350 Royale St.
Trois Rivières, QC G9A 4J4
Tel: 819-693-7373
Fax: 819-693-7377
Manager: Jean-Francois Halley
Email: Jean-Francois.Halley@crawco.ca

Common claims can give good guidance

In our efforts to keep abreast of developments in claims, we are easily mesmerized by novel situations that could bring upheaval into the domain of loss adjustment. However, sometimes a case comes along that, at first blush, is so banal it hardly seems worth reviewing. Yet underneath the facts, there can be a strikingly lucid comment on the basics of contract law, evidence and policy interpretation, and thus claims handling. Such is the situation in *Comer v. Pilot et al* (OSCJ 2008).

The facts of the case could not be any more commonplace. The plaintiff claims that his insured vehicle, along with an attached uninsured trailer and boat, was stolen from the parking lot of a bar he had attended after he had been given a lift home by a stranger earlier in the evening. The vehicle was found early the next morning by the police; the insured only reported the theft after the police had discovered it. The auto had been involved in a single vehicle accident. When it was found, the insured vehicle had its 4 way flashers on, the passenger window was rolled down, the doors were locked and there was no evidence of forced entry. Prescription drugs and alcohol were found in the vehicle.

During the loss and theft investigation, the insured was uncooperative with both the insurance company and the police. When the police checked the insured's cell phone, they found a call had been made after the car had supposedly been stolen, a fact to which the insured subsequently agreed. The cell phone even contained photos of home-grown marijuana plants.

The "red flags" in this situation were numerous and obvious, yet the judge touched upon every one of them and refused to consider them in the rendering of his verdict. The judge even admitted to being hard pressed not to sound pejorative when he described the insured as "lazy" and having a way of thinking that "does not seem to be burdened by attention to detail." Even the fact of his non-cooperation with the police was recognized by the judge as a right the insured had under the Charter of Rights and Freedoms. Every "red flag" that came up was knocked down and yet the judge still ruled against the insured on coverage under the auto policy. Why?



This case/claim clearly shows that facts and their obvious logical inference are all that matter in a court case. The judge shows the court that he must himself be guided only by legal tenets relating to insurance and general civil law. Specifically:

- 1 The insured has the onus of proof to bring himself under the policy even if the defence is one of fraud (i.e. is the loss covered by the policy?);
2. The number of witnesses for the plaintiff or defendant is not as important as the reliability and credibility of those witnesses (i.e. one good witness outweighs any number of unreliable ones); and
3. A logical inference of the situation according to the facts will be applied to the case (i.e. what is more probable than not based on what can actually be factually determined).

Based on these classic rules, the judge pored over the statements taken by the police and Pilot, including an examination under oath. The judge noted discrepancies in the insured's statement particularly about the whereabouts of the vehicle's keys during the theft. The insured insisted that there was only one set of keys. The vehicle had no damage to its steering column when found; therefore, the alleged thief had the keys to the vehicle. When the insured said that he was going to get his vehicle, some distance away, without being sure that the

keys were available and still being unsure even after the theft, the judge applied simple logic.

He deduced that no theft had occurred because the person who drove the vehicle had the keys and if the insured was on his way to get his vehicle, logically, he must have had the keys to be able to retrieve it. As a result, the judge found that no theft had occurred and that the insured had not proven his loss. No coverage was afforded.

This case demonstrates the strength of statement taking and relying on nothing but facts in order to determine coverage. Everything else is extraneous. "Red flags" can be explained away logically even if there are several of them, as in this case.

When conducting an investigation, good adjusters are not swayed by details of a loss that the court would not consider in its verdict. Character flaws, prior incidents, odd situations and other factors of this type that rely on subjective judgment by the adjuster will never hold up in court. Hard facts collected and verified by the adjuster and from which a logical inference can be derived are the only type of objective evidence that interests a court. It is vital that all adjusters' files reflect this understanding.

CARING

WORKING TOGETHER

CRAWFORD HONOURS AND REMEMBERS YOUR FRIENDS AND LOVED ONES AFFECTED BY CANCER

VOLUNTEERING

SUPPORT

HEALING



HEALING

WORKING TOGETHER

We would like to thank all of our friends and clients who took the time to visit our booth and fill out a card at last year's RIMS Canada conference in Edmonton. For every card you completed, Crawford donated \$5 to WICC. Thanks to you, we raised a total of \$2,500, and are one step closer to winning the fight against cancer.

SUPPORT

VOLUNTEERING

SUPPORT

CARING



CRAWFORD CARES
A Community Relations Program



wicc
WOMEN IN INSURANCE CANCER CRUSADE

Psychological claims *(continued from page 3)*

One wonders what fortitude and robustness means after *Frazer v. Haukioja* – perhaps not much.”

One thing for certain is the degree of seriousness with which adjusters and risk professionals must address psychological claims, according to Famula.

“If someone is rear ended in a car accident and he or she suffers a minor injury, there often seems to be a claim for anxiety disorder or depression,” he says. “But that claim has to be looked at by the adjuster in the context of the person’s life. What else is going on in his or her life? Is the person experiencing stress at work or at home?”

In most psychological claims, the opinions of medical experts are required, whether for examinations, reports or testimony. Medical reports from experts representing the defendant may be used to minimize damages, to prove no breach of standards or prove no causation. However, as Famula notes, “these tests and reports can be quite expensive.”

There are many factors that should be considered when retaining a medical expert, including identifying the specific purposes or situation where an expert is required (i.e. to rebut plaintiff’s expert, establish no causation, etc.), selecting the right expert (reputation, technical expertise, impartial-

ity), evaluating timing considerations (i.e. sequencing of experts and/or reports), instructing experts and controlling costs. Consultations with qualified legal counsel are crucial in determining the right approach to a case involving a psychological claim. “Adjusters cannot take these claims lightly,” Famula concludes. “They have to do their due diligence, document the file and ask the right questions. After that, it really comes down to the evidence in the case at hand and the experts’ reports and testimony.”

For more information on psychological claims and Crawford’s Legal Services, please complete the reader response card.

Crawford is going green

Would you prefer to receive *ProClaim* as a downloadable, electronic document? If so, please complete the reader response card, including your e-mail address, or contact us at info@crawco.ca.

For an archive of past editions of *ProClaim*, please visit our website—www.crawfordandcompany.ca.



Crawford

ProClaim

ProClaim is published by Crawford & Company (Canada) Inc. as an information resource for our clients, prospects and associates. Our focus is to cover key issues while offering solutions to the insurance, risk management and healthcare industries in Canada.

For more information about any of the articles published in *ProClaim*, to submit ideas for articles or to order additional copies, please complete the reader response card or e-mail info@crawco.ca.

The information in *ProClaim* is not offered as legal or medical advice, or as a substitute for professional assistance. All materials are © 2010 Crawford & Company (Canada) Inc.

Crawford & Company (Canada) Inc. is a wholly owned subsidiary of Crawford & Company. Based in Atlanta, Georgia, Crawford & Company (www.crawfordandcompany.com) is the world’s largest independent provider of claims management solutions to the risk management and insurance industry as well as self-insured entities, with a global network of more than 700 locations in 63 countries. The Crawford System of Claims SolutionsSM offers comprehensive, integrated claims services, business process outsourcing and consulting services for major product lines including property and casualty claims management, workers’ compensation claims and medical management, and legal settlement administration. The Company’s shares are traded on the NYSE under the symbols CRDA and CRDB.

An Equal Opportunity Employer.

Canadian Head Office:

539 Riverbend Dr.
Kitchener, ON N2K 3S3
Tel: (519) 578-5540/1-800-267-5540
Fax: (519) 578-2868

Sales and Marketing:

300-123 Front St. W.
Toronto, ON M5J 2M2
Tel: (416) 364-6341
Fax: (416) 364-6346

Canada Post Publications Mail
Agreement # 40048380

www.crawfordandcompany.ca



Crawford

300-123 Front St. W.
Toronto, ON M5J 2M2

March 2011

ATTENTION MAILROOM:

If undeliverable, please return to sender by mail, e-mail info@crawco.ca, or fax 1-866-250-7779. Thank you.