

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1055

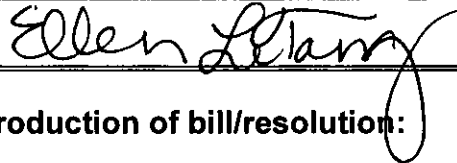
2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1055
January 10, 2011
12721

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Workers' compensation permanent partial impairment benefits.

Minutes:

Chairman Keiser: Opens the hearing on HB 1055.

Jennifer Clark~Legislative Council: Introduces the bill dealing with the transition from the 5th to the 6th addition of the AMA guidelines.

Vice Chairman Kasper: How many pages is the 6th addition?

Jennifer Clark: I don't know.

Chairman Keiser: Could WSI provide a copy?

Representative Nathe: On page 2, line 22, underscore "conduct a review", is that a review of the operations or is that a financial review?

Jennifer Clark: It is my understanding that that is a review of the employee's injury.

Chairman Keiser: Were you attending all of the presentations by the consultant?

Jennifer Clark: Yes.

Chairman Keiser: What this bill proposes to do is based on the consultant's recommendation is to lower the thresholds and provide some additional revenues for those people in those categories. As a policy, the North Dakota legislature in the past made a determination to not fund the lower levels but put significantly more reimbursement at the higher injury levels. Did the consultant address that in suggesting that were too high on the high end, so we can be like everyone else in the country?

Jennifer Clark: I could double check the recommendations, but I don't remember there being any discussion of that.

Chairman Keiser: You would think that that would go both sides of that argument as a consultant, that gee, you are awfully high on the extreme injuries and therefore should back down as well as you are high enough on the low injury and should increase that?

Jennifer Clark: I can look into that. What I do recall is during the interim there was some discussion our payment schedule is laid out right now. It's weighed out more lightly on the low end of injury and goes up and the injury becomes more severe and that we maintain that schedule.

Chairman Keiser: I just want the consultant to a qualified consultant and look on both sides of the argument.

Representative Amerman: The 13% when the consultant recommended going to the 6th addition. He also recommended, using 10%, so that it would be revenue neutral, otherwise, there might be claimants that drop through the cracks and that's where you have the savings.

Jennifer Clark: I will defer to your recollection of what that number was. I know it was lower 13, the recommendation made by the consultants that number 13 that is in this bill draft, is after committee consideration. The consultant's recommendation was based on a revenue control model.

Chairman Keiser: Anyone else here in support HB1055?

Tim Wahlin~Chief of Injury Services at WSI: (See attached testimony 1).

Representative Ruby: By going from the 5th to the 6th addition, basically it means that advances in medical technology procedures, treatments, allow for the impairment to be lessened as far as how it can be treated and how they can get back to higher level of functionality, is that correct?

Tim Wahlin: That correct.

Representative Ruby: The idea is not necessarily come up with a different guide that is going to cut people off getting the payment they had before. That's correct?

Tim Wahlin: That's correct.

Representative Ruby: I know the recommendation was for the 10%. We were hoping for some data or calculations that would show the neutrality to that, but it's impossible to tell. Other than the recommendation, what is the justification behind still supporting the 10%?

Tim Wahlin: The summarizations of discussions that took place in the interim committee hearing was questions from the committee members was "where is that revenue neutral point"? It could be anywhere between that 10 and 16 percent level. The auditor that we hired said 10%. We wanted to make is clear that those numbers are not strong because we don't rate anything below 16%. We have no data on North Dakota population. Our mix falls beneath there. Its agency position, we will support 10% that was requested by

performance evaluator. The committee's discussions going to a level somewhere in-between there in choosing 14%, obviously we can't criticize those, this is one area that we don't know.

Chairman Keiser: If I could ask for a clarification, I'm confused, you said the committee approved 14, but this says that Worker's Compensation Review Committee, is this your bill or not? Did your bill get changed?

Representative Ruby: No, the original bill that came before the committee was 10% level. The committee discussed this issue and didn't feel by following the recommendation that it should be revenue neutral that 10% was the right number. An incremental approach was adopted by the committee to change the original bill that was presented to us to the 14%.

Chairman Keiser: This isn't the bill the committee approved?

Representative Ruby: Yes, this is the bill we approved; it's not what we first had before us.

Chairman Keiser: These bills are interesting, North Dakota by design make a conscious decision legislatively policy, not by an administrative branch of government, that we would dramatically increase the higher injury rate of reimbursement. What did the auditor say about that? Are we too high relative to other states?

Tim Wahlin: It wasn't addressed.

Chairman Keiser: It wasn't addressed; we only address one side of this coin? I'm upset.

Tim Wahlin: That was the recommendation.

Chairman Keiser: Who's managing it?

Chairman Keiser: Any other questions? Anyone else here to testify in support of HB 1055?

Bill Shalhoob: (see attached testimony 2). We support the 14% and oppose anything below that.

Representative Ruby: When we switched from the 4th to the 5th, it actually improved the payments and was on the plus side for raising the impairment payments for the injured worker. Do you remember if there was a recommendation at that time to raise the percentage to 18 or 20 % because of the greater benefit it was creating?

Bill Shalhoob: I don't believe there was. I think that the 16% was put in the 1995-1997 changes and been touched since. Position has been, if it has improved benefits over the years and the fund was in a position to pay for it, then we were OK with that. The worst thing is getting the fund back in a position. We have the opportunity to know without creating harm to any claimant, we should take that opportunity.

Chairman Keiser: Anyone else to testify in support, in opposition of HB 1055?

Dave Kemnitz~President of the AFLCIO: HB 1111 has the 10%. For decades now, we have struggling to address than 10% threshold. The ogle was the fund was in trouble and looking for money. There wasn't any rational that we understood that 16% was somehow fairer than 20, 10, or 5%. There was a lot of money there and it moved up to the severely injured. The question is, top is not enough but the bottom isn't there anymore. HB1055 address it to a degree, but nothing a court or jury would award. Two, PPI is to compensate for economic effects are difficult to quantify. Three, the awards or damages for physical impairment are just that but below 16% isn't covered at all. We would like to see that readdressed and 10% isn't what we would pick, but it's the number that seems reasonable amongst the governor and the House Industry, Business and Labor Committee. We would agree to go with that, but the 6th addition is not necessarily beneficial to claimants either. We should get something from additional loss. Is there clarification on page 3, lines 4-7. Of exactly what that language does and how it's applied? In the end NDAFLCIO would wish you would go to HB1111 and keep the 10% in it and address it on the AMA guidelines from that separate issue.

Chairman Keiser: Is there anyone else here to speak in opposition, in neutral for HB 1055. **Closes the hearing on HB 1055.**

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1055
January 17, 2011
12953

☐ Conference Committee

Committee Clerk Signature

Ellen Litang

Explanation or reason for introduction of bill/resolution:

Work session Minutes:

Chairman Keiser: Did a drawing and explanation on the board.

Representative Amerman: I'm trying to recall the interim committee what we heard. What we understood from the evaluation according to the Cedrik Company who did the evaluation, they said we should go to the 6th addition. If we went to the 6th addition, we should lower the threshold to 10%. The way they came up with those figures was they used the 4th addition, so that was thrown into the mix. It became confusing. The way I understood it is if you go to the 6th and lower it to 10, the people who might have qualified by using the 5th, would still qualify, if you went to the 6th addition and kept it at the 16%, then there was people that might have qualified where ever on that scale. Now because they went to the 6th addition and left it at the 15%, they would not qualify. If you go to the 6th addition you have to lower the threshold.

Chairman Keiser: I agree with Representative Amerman, that moving from the 5th to the 6th, that there are some people that would fall down and lose coverage, that's why they put in the 13%. That's ok, but what I'm concern with is that we are ultimately cutting a benefit and I don't think that's what the interim committee intended to do.

Representative Ruby: Initially, not knowing what the revenue neutral number was, the idea was to incrementally move, first to capture anyone that was covered under the 16 to be covered under the 14, but what that failed to do was to adjust the multipliers, that the rest of the money stayed up. It captured a few more people but not as many that were in that category, it could have cut benefit to the other people. In just capturing more people to put that extra 1.1 million, we would have had see over a period of some years to see what percentage to lower that. I'm much more in favor of retaining the benefit to the people who already receiving it than I am lowering it to a percentage that captures people for just a minor percentage of repairment.

Chairman Keiser: We will keep doing runs until we get the formula that does what we need it to do.

Tim Wahlin~Chief of Injury Services-WSI: One of the discussions at looking at one of these models was whether or not lowering that threshold where the awards are first

awarded is the right way to go about it. It was the evaluator's determination was absolutely. One of the other ways is to go back and address the statute. We brought that up with the evaluator but he didn't like the idea. On line 23, page 1, it adjusts the actual dollars used against the multiplier and that is another option as well. Right now the organization calculates the amount of the award by multiplying 33 1/3% of the state weekly average wages. That is now our multiplier, our dollars, is happens to be \$228 right now and that multiplier is taken against the draft on the other side, depending where your impairment ends up. Suggestion was, if you are looking at dollars, you could simply change the size of that multiplier. Then you will be hitting the same curve on your graph. That was one of the suggestions that the evaluator didn't listen to.

Chairman Keiser: What's the total cost on the 40%?

Tim Wahlin: I believe it's about \$225.

Chairman Keiser: That's leaving the threshold at 15?

Tim Wahlin: That correct.

Chairman Keiser: What if we drop the threshold to 13 to pack up the people we would lose from moving to the 6th?

Tim Wahlin: That's where is become dicier because we don't have a great picture of that population once we drop down. We have fair numbers for that population right below the 16% threshold. So probably down to 14% were we would have some fairly reliable numbers.

Representative N Johnson: What did the report said, the change from 5 to 6, is that lower percentage of impairment, if you were currently 15% impairment. So what that would do is move you to 12%, in essence they would have the same impairment as somebody at 5% but now they are identified at 12% and in our system, they would be cut off.

Tim Wahlin: Yes you are correct.

Representative N Johnson: So the group that may be dropped down would still have an appendment, so previously you received x amount of dollars, now you fall below, you still have the same impairment but now get zero.

Chairman Keiser: That is one part of the problem and the other part of the problem is you're cutting everybody in the system. What I would suggest from 13 to 14 and do the best job you can. Then changing the average weekly wage appropriately, coming as close as you can to revenue neutral to return those folks. Then we can have the debate whether to throw more money in at any time.

Vice Chairman Kasper: That's going to the 6th addition?

Chairman Keiser: Yes, go to the 6th addition, that's appropriate, but what we are attempting to do is basically hold everyone currently in the system harmless.

Representative Ruby: Under the scenario of 1 or 2 % reduction and with the multipliers would be, that way we could take a look at both.

Chairman Keiser: That would be a different multiplier, depending on whether you go 13 to 14.

Representative Amerman: It would be nice to see those comparisons. There was no data to compare to.

Chairman Keiser: I don't disagree 100% but I do disagree in part. I think we have a good handle from moving from the 5th to the 6th, I feel strongly that this is not the time to take any of the benefit away from our injured workers.

Chairman Keiser: Closes the work session on HB 1055.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1055
January 19, 2011
13010

☐ Conference Committee

Committee Clerk Signature

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Workers' compensation permanent partial impairment benefits.

Committee Work Minutes:

Chairman Keiser: Opens the committee work session on HB 1055.

Tim Wahlin~Chief of Injury Services of WSI: (See attached table) They lowered from 16% to 14% on the threshold. We talked about altering the multiplier amount.

Chairman Keiser: Is that at 14 where we have to come up rather than 10.

Tim Wahlin: We are currently at 16%, the auditor recommended going to 10%, the Workers' Compensation review committee, said 14%. The way that HB 1055 currently exists is the base line.

Chairman Keiser: Does the 33 1/3% change?

Tim Wahlin: If we change that to 40%, I do have an amendment that would change it from 33 1/3% to 40% of the state's average weekly wage. The increase there would be \$450,000.

Chairman Keiser: What if we changed it to 38%?

Tim Wahlin: I believe it was a 10% increase, maybe 300,000 instead of the 450,000.

Chairman Keiser: Change to 35%.

Tim Wahlin: It would slightly increase it but not a lot.

Chairman Keiser: Approximately, if we go 14 as the floor and 35 for the SAWW multiplier, then it's almost revenue neutral?

Tim Wahlin: In our review the 1.1 million going to the 6th, if we figure offsets to that and going to 40%, that would be an extra 450,000 against the 1.1 million. If we went less than 40, it would be less as well.

Representative Ruby: We talked about going from the 16 to the 14, do you have any data because there was some discussion to, pretty close to know, that are just under making it to 16 right now? With switching from the 5th to the 6th addition, are people more likely to get bumped down 1 or 2 % if they are at 16% with the injuries they have?

Tim Wahlin: In reviewing those numbers and going through the reratings that the performance evaluation had, I don't think it's that easy. It's more complicated because they are rating them differently, depending upon the injury, they are all over the map.

Representative Ruby: We really don't have any way of putting the amount of something that's going to capture the people that just go across the line to not being covered under it, it might make more sense to keep the percent where we are at and put it all back up into awards of the people already covered.

Chairman Keiser: You are right; we have apples and oranges between 5th and 6th. They are not directly comparable. What the 6th does bring is objectivity to the rating system and objectivity would be a blessing, not a curse. Right now that is a lot of subjectivity. The 6th will make it easier for claims analysts. I have no problem taking the interim committee's recommendation and sending this bill out with 35%. It will be close to holding them harmless. It's a policy question.

Representative Frantsvog: Would it be possible for those already receiving compensation under the 5th addition to leave those as they are and implement the 6th addition from a certain date forward? That way nobody takes a cut.

Chairman Keiser: Anything is possible. We can do whatever we want. That is going to create a real disparity for the same injury.

Representative Ruby: This is a onetime payment, so it not like an ongoing payment that is going to get reduced.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Motions to adopt the amendment (11.0269.02001 03000).

Representative Kreun: Second.

Voice roll call taken, motion carried.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Motions for a Do Pass as Amended.

Representative Kreun: Second.

Roll call was take on HB 1055 for a Do Pass as Amended with 12 yeas, 1 nays, 1 absent and Vice Chairman Kasper is the carrier.

FISCAL NOTE

Requested by Legislative Council
01/21/2011

Amendment to: HB 1055

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation removes the option of a deferred ppi payment; provides that the organization move from the 5th to 6th edition of the AMA Guides; reduces the ppi threshold; increases ppi multipliers; and increases the ppi benefit rate applicable to all awards.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2011 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1055

BILL DESCRIPTION: Permanent Partial Impairment (PPI) Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation removes the option of deferred payment of a PPI award; provides that the organization move from the 5th to 6th edition of the AMA Guides to the Evaluation of Permanent Partial Impairment for the purposes of evaluating impairment awards; reduces the threshold for percentage of whole body impairment to qualify for an award from 16% to 14%; increases permanent partial impairment awards (multipliers) within the 14% through 25% impairment levels; and increases the PPI benefit rate from 33.33% of the State's Average Weekly Wage (SAWW) to 35% of the SAWW.

FISCAL IMPACT:

It is estimated that the proposed change of moving from the 5th to the 6th edition of the AMA Guides to the Evaluation of Permanent Partial Impairment for the purposes of evaluating impairment awards would result in a 37% reduction of the PPI claim cost. This amounts to approximately \$850,000, or approximately a -0.5% premium level impact.

The proposal also provides for utilizing the 6th edition for the rating of pain. It is our understanding that the 6th edition provides for a more explicit method of rating pain than available in prior editions. It is estimated that the change in how pain is rated under the 6th edition would result in a 10% reduction of the PPI claim cost, or approximately \$260,000.

It is estimated the increase in the PPI benefit rate from 33.33% of the SAWW to 35% of the SAWW would increase PPI claim costs by 5%, or approximately \$110,000 based on current award levels.

The proposed reduction in the PPI impairment threshold from 16% to 14% and the proposed increase in benefit levels for the 14% through 25% impairment levels will serve to offset the reductions associated with the move to the 6th edition, however, we cannot state within any high degree of confidence to what extent as we do not have access to an appropriate base of historical experience to use in deriving the estimates.

The proposed change would also serve to increase WSI's administrative costs. To the extent the legislative proposal is adopted, WSI would request the appropriation of one additional FTE with an anticipated cost of approximately \$151,000 for the biennium.

DATE: January 20, 2011

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	01/21/2011

FISCAL NOTE

Requested by Legislative Council
12/15/2010

Bill/Resolution No.: HB 1055

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation removes the option of deferred payment of a PPI award; provides that the organization move from the 5th to 6th edition of the AMA Guides; reduces the ppi threshold from 16% to 14%; and increases ppi awards within the 14% through 25% impairment levels.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2011 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1055

BILL DESCRIPTION: Permanent Partial Impairment (PPI) Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation removes the option of deferred payment of a PPI award; provides that the organization move from the 5th to 6th edition of the AMA Guides to the Evaluation of Permanent Partial Impairment for the purposes of evaluating impairment awards; reduces the threshold for percentage of whole body impairment to qualify for an award from 16% to 14%; and increases permanent partial impairment awards (multipliers) within the 14% through 25% impairment levels.

FISCAL IMPACT:

It is estimated that the proposed change of moving from the 5th to the 6th edition of the AMA Guides to the Evaluation of Permanent Partial Impairment for the purposes of evaluating impairment awards would result in a 37% reduction of the PPI claim cost. This amounts to approximately \$850,000, or approximately a -0.5% premium level impact.

The proposal also provides for utilizing the 6th edition for the rating of pain. It is our understanding that the 6th edition provides for a more explicit method of rating pain than available in prior editions. It is estimated that the change in how pain is rated under the 6th edition would result in a 10% reduction of the PPI claim cost, or approximately \$260,000.

The proposed reduction in the PPI impairment threshold from 16% to 14% and the proposed increase in benefit levels for the 14% through 25% impairment levels will serve to offset the reductions associated with the move to the 6th edition, however, we cannot state within any high degree of confidence to what extent as we do not have access to an appropriate base of historical experience to use in deriving the estimates. Based on the very limited and dated information we were able to review to analyze this change, it is likely the threshold level required to completely offset the reductions associated with the move to the 6th edition would fall somewhere between the 10% and 16% levels.

The proposed change would also serve to increase WSI's administrative costs. To the extent the legislative proposal is adopted, WSI would request the appropriation of one additional fte with an anticipated cost of approximately \$151,000 for the biennium.

DATE: December 15, 2010

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	12/22/2010

January 19, 2011

VR
1/19/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1055

Page 1, line 23, overstrike "thirty-three"

Page 1, line 24, overstrike "and one-third" and insert immediately thereafter "thirty-five"

Renumber accordingly

Date Jan 18Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1056House House Industry, Business and Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 11.0269.02001 03000Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt AmendmentMotion Made By Rep Ruby Seconded By Rep Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigasaa					

VOICE vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

14⁺¹
 p. 1 line 23 & 24 - str 33¹/₃
 & changing to ~~35%~~ 40%

Date: Jan 19-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1055

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.02.69.02001 03000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	AB	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigasaa	✓				

Total Yes 12 No 1

Absent 1

Floor Assignment Rep Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1055: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1055 was placed
on the Sixth order on the calendar.

Page 1, line 23, overstrike "thirty-three"

Page 1, line 24, overstrike "and one-third" and insert immediately thereafter "thirty-five"

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1055

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1055
March 7, 2011
Job Number 14991

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation permanent partial impairment benefits

Minutes:

Testimony attached

Chairman Klein: Opened the hearing on House Bill 1055.

Representative Ruby: He said that the next two bills came from the Workers' Compensation Committee. He said this bill deals with permanent partial impairment. He said that it came from the performance evaluations that suggested they go from the fifth to the sixth addition in dealing with permanent partial impairment, mainly because of updates and technology and medical procedures. He said an example would be that years ago someone with a knee injury might be impaired the rest of their life but now with knee replacements they have been improved and the percentage of impairment is reduced for things like that. He explained the intention and the problems they saw and the changes made.

Chairman Klein: What you did was go to the sixth addition and dropped two percentage points to the 14th percent. Your efforts were to maintain revenue neutrality, so it isn't going to cost us more but it won't cost us any less? The folks that might have been affected by changing the multiplier will not be affected?

Rep. Ruby: Right if we would of dropped to ten it would have been at the expense of some of the people in the upper level of impairment that would of received an award at that point and would receive less if we went to ten percent.

Senator Andrist: Asked if this brings in people with injuries at fourteen percent, what will it do for a new person that comes in with a fifty percent injury is he going to get more, less or the same?

Rep. Ruby: The intent with the multiplier is to get that person to receive the same. Within each of the brackets there might be some slight fluctuations. He said what they did with the multiplier will affect them much less than if they just dropped to the ten percent.

Tim Wahlin, Chief of Injury Services, Workforce Safety & Insurance: Testimony Attached (1).

Chairman Klein: In number one of section one, in reference to your last paragraph not allowing a deferred payment anymore and you suggested it has only happened once?

Tim: That is right it happened one time which goes back to 1995.

Senator Andrist: Asked for Tim to give them an idea on how much they anticipate lowering the threshold to fourteen percent is going to cost and how does it become revenue neutral, who does it impact up the ladder?

Tim: Currently under the fifth addition they only rate the injuries that are close or above sixteen percent. He said that basically the organization has no data on those injuries falling below sixteen percent. He said when they looked at moving to the sixth addition that the awards will decrease in most circumstances, overall by thirty seven percent in the amount that they pay out. The way the bill got here was in lowering it from sixteen to fourteen percent and then on top of that the House changed the amount they multiply the award by from 1/3 the states average weekly wage up to 35 percent of the states average weekly wage. He continued to explain how it would work.

Senator Andrist: Asked if they were giving an undetermined amount to the people injured in the fourteen to sixteen percent range and we expect the rest of the awards to become slightly lower but we aren't absolutely sure.

Tim: That is fair. He said if they go back to the question about the fifty percent PPI, the individual under the fifth addition with fifty percent PPI and an individual under the sixth addition with a fifty percent PPI, under this that person will receive more dollars. Not because the multiplier has changed but the dollar we multiply it by is going to increase by two percent. It really depends on what percentage they select on how it will work out.

Senator Laffen: Asked for Tim to explain the logic of being revenue neutral, if they had to do that.

Tim: Said they didn't have to do that but it was a recommendation from Sedgwick CMS, that it be revenue neutral.

Questions asked were to Tim's testimony and answers given in the written testimony.

Bill Shalhoob, North Dakota Chamber of Commerce: Testimony Attached (2).

David L. Kemnitz, NDAFL-CIO: In support with qualifications. He handed out a Sedgwick Report, Element Seven- Evaluation of a Move to the 6th of the AMA Guides. He addressed the report and his feelings on the concerns he has.

Chairman Klein: You are in support of the bill but would like that number changed?

Dave: Yes, thank you.

Senator Larsen: Said that on page 115 it was talking about the DSM and that it is changed and updated. He said that the addition four, five and six is not the DSM but updating and he asked if Dave was saying that as well as take the sixth addition update, we also inject the DSM for the mental health part of that sixteen percent lower, take in affect to injuries for mental health injuries and others?

Dave: He said he wasn't sure of the question but as he read it and understood it, mental and behavioral disorders become less DSM-IPPRs diagnoses under this chapter. This chapter limits impairment evaluations to three categories of mental illness which North Dakota does not recognize.

Sebald Vetter, C.A.R.E: In support of the bill only if it goes down to ten percent. He said they don't even pay in the fifth addition. He gave the numbers that he had catastrophic injuries and the years they occurred. He also had numbers of the PPIs that were payed.

Daniel Finneman: In support but wants changes. He handed out his doctor report and also a case that was heard at the court of appeals for the eighth circuit, Attachments 5 &6. He talked about the award given in that appeal and his doctor's report. In the doctor report it stated he should qualify for a PPI put has not received it yet. He said the state law says he should receive it and Workers' compensation should pay it and they should have to show accountability to the rating they are giving and why. He said he feels they should be getting more money and the stipulation should be taken down to 5%.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1055
March 9, 2011
Job Number 15193

☐ Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation permanent partial impairment benefits

Minutes:

Discussion

Chairman Klein: 1055

Senator Schneider: Said he couldn't remember if they heard testimony on the overstrikes on page one, lines twelve through twenty two. He said that this was something one of their clients has done. He stated he was a disabled fire fighter and received a PPI award and deferred the payment. He asked if WSI provided any testimony.

Chairman Klein: Said he believed they did. He said it has only happened once. The discussion here is that they had heard from some of the injured workers who would like to see it back to one. He said he understands their thought some didn't like it going from sixteen to fourteen.

Senator Laffen: States that they went from the fifth addition to the sixth addition with a big study and discovered it saved the citizens of the state money and then because the number was lowered there was no savings to the state.

Senator Schneider: Said that it isn't specifically saving the citizens of North Dakota money, employers pay into this fund and anytime there is savings it is coming in the form of reduced benefits. He said they have a substantial fund right now with a lot of injured workers with incredible needs.

Senator Laffen: Said except in this case, the study didn't change anything and we're saving a couple of millions of dollars in affect we would be increasing the benefits if we pass this bill.

Chairman Klein: Said that we would be adding a couple of percentages as we lower that threshold.

Senator Schneider: Said that he thinks it is interesting that when they hear the consultant's report that we have to do this, we do it unless it will potentially help injured

workers, like it would here. He said lowering threshold to the amount recommended by the consultant would open up PPI awards to more injured workers who suffer permanent impairment. He is disappointed that they would pick and choose which consultant's recommendation they would adopt. He would like the committee to look at this further.

Senator Andrist: Said he wasn't hearing that it was saving two million dollars but that they were projecting it to be revenue neutral.

Chairman Klein: Said that they would give everyone the opportunity to think this over.

Senator Laffen: Said that in the revision they went through all of the numbers and they changed a lot of things and that change resulted in roughly 2.5 million dollars for the state of North Dakota's program and to make it revenue neutral they lowered the PPI from sixteen down to fourteen. That is what made it revenue neutral, bringing more people into the benefits that could collect on PPI.

Senator Schneider: Asked if anyone knows the status of the fund.

Chairman Klein: Said they would get that information and closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1055
March 21, 2011
Job Number 15747

☐ Conference Committee

Committee Clerk Signature

Tom Lubell

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation permanent partial impairment benefits

Minutes:

Discussion and Vote

Chairman Klein: Said 1055, we are moving from the fifth to the sixth addition and in attempt to make it revenue neutral the amendments go down from sixteen to fourteen percent on the impairment awards and then add to the multiplier.

Senator Laffen: Said he spent time looking it over and talking with WSI and there is two parts to this as you stated. As I understand it the American Medical Association writes the guidelines for how much each level of impairment is worth and over the course of time, since the last rewrite, medicine has made it possible that a certain injury is less permanent now because of better surgeries and all those kinds of things. You could have the same injury you had in the last rewrite and because of advances in medicine this rewrite, you might have been twenty six percent impaired now you are only twenty four because of what medicine has done. So that is how they sixth addition technically saves about a million dollars a year in these awards for the state of North Dakota, so that is one piece and then our organization that looked at this tried to make it revenue neutral by lowering the threshold. I would see this personally as just two separate things and would like to debate the merit of lowering the threshold on its own merit. Occasionally for the people who pay into this system, private business or whoever is paying into this, the cost of business, it would be nice if the cost of business could go down. That is what happened with advances in medicine, the cost of business for doing this goes down by roughly a million dollars a year. I would like to see the benefit passed on to the business people who pay for this especially in the economy we are facing right now. I have an amendment that I would like to propose. He said this would take it back from thirteen to fifteen, it leaves the threshold where it was, Laffen amendment.

Senator Andrist: Said you would have to remove a few of the lines there.

Senator Laffen: You are right fourteen and fifteen would have to come out as well, you would have to strike twenty six through thirty. He moved to adopt the Laffen amendment.

Senator Andrist: Seconded the motion.

Senator Schneider: Said he had asked of the status of the reserve fund. So when you talk about saving a million dollars I think it is important to keep in mind what that reserve level is and I don't have the exact number off the top of my head but I think the Chairman may.

Chairman Klein: Said that the reserve is adequate, it has grown and another dividend will be paid out this go around. The reserve is very healthy. It is at 413 million.

Senator Schneider: What are the total reserves?

Chairman Klein: Said the estimated discounted financial reserves should be 803 million.

Senator Schneider: So when we talk about saving a million dollars and returning it to the business community, there isn't necessarily a guarantee of that. It may mean one million more for this 803 million dollar fund. What we are doing is taking a million dollars in benefits that would otherwise be paid to individuals that have up to fourteen percent whole body permanent impairment. This is a permanent injury affecting 14% of their whole body. We are doing it for what; do give another million to states 800 million fund. I do not think in switching to the guides we want to keep that curtain cut off. I believe the consultants recommended ten percent as the threshold and that was raised to thirteen and now we are going back to fifteen. That is extremely unwise and that is going to affect dozen of injured workers who are legitimately injured workers and have permanent impairment up to 14% of their whole body.

Senator Laffen: Said the million will save the operation of this, it may go into the reserve but ultimately if we enough savings the cost of insurance comes down. In the fiscal note it stated this was worth about .5% in the premium. He said that he sees the threshold as a completely separate issue; they should debate the threshold on the merit of where the threshold should be it should have nothing to do with whether the fund is solvent or has money in it. I don't see why switching to this new update from the American Medical Association had no recommendation about changing the threshold.

Senator Larsen: Said he looks at it, the manual the technology changes this addition goes from the fourth addition to the fifth and now we are at the sixth. He said it is just the way technology is going; it is unfortunate they are going to be cut out of the loop but they can't be using the old manual.

Senator Andrist: The trust fund is solely related to the benefits that they pay out and also related to the premiums we charge people. We have gone through significant periods in the last two decades where we were raising those premiums way beyond where we would have liked to raise them to save the fund from difficulty. He said he was comfortable with Senator Laffen's premise, we charged them more because the health fund was bad, if we can reduce their premiums because the health fund is good, they should be part of the component as much as anybody else. I think particularly compelling is the statement that we should discuss that level of impairment independently of where the trust fund is because we established through our own procedures that fifteen percent was a fair level to an injured worker. I think the testimony at that time was that very few injured workers had to change occupation because of fifteen percent impairment.

Chairman Klein: Said that Senator Laffen makes an interesting point but I think in the grand scheme of things, and Senator Andrist has been here a bit longer and worked through the real difficult times, in ninety seven the times were still a little difficult but we've been able to straighten the cart up and it is on its wheels, I am just not sure how heavy of a load we should have it carry. I think the idea here is certainly, the idea in the bill is to try to address the new manual, and try to make this revenue neutral. We have worked hard to try to balance, give some worker benefits. I am not going to support the amendments. He said he thinks the amendment would put them backwards.

Senator Andrist: Asked if the bureau would have moved to the sixth addition without the bill.

Chairman Klein: Said it was his understanding that they would have not.

Senator Murphy: Asked if it wasn't true that their payments to WSI workers are very low compared to the nation and that our charge to the employer is also fairly low.

Chairman Klein: Said that they are one of three states that is left with a monopoly. He explained how it works in other states.

Continued discussion on the good and bad of the bill

Senator Laffen: He said the fiscal note says that there is an additional FTE at approximately 151,000 dollars and he asked what it was for and they said it was strictly related to the lowering of the threshold that it would take more staff to do that. They did come back and say that they don't need that they can handle this within their current staffing.

Senator Andrist: Said when you say this is just keeping things even, it is not keeping things even it is expanding benefits. We are expanding them with the money we are saving because of the advance in medical technology but it is an expansion of benefits if we don't approve the amendment.

Chairman Klein: Said he could argue that possibly but wouldn't. Whether or not you are going to vote for the amendment, we are going to find out and the clerk will call the roll on the Laffen Amendment.

Roll Call Vote: Yes-3 No-4

Senator Nodland: Moved a do pass on the bill.

Senator Larsen: Seconded the amendment.

Roll Call Vote: Yes-5 No-2

Senator Laffen to carry the bill

Date: 3/21/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Engrossed HB 1055

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Laffen Seconded By Senator Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein		✓	Senator Mac Schneider		✓
VC George L. Nodland		✓	Senator Philip Murphy		✓
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 3 No 4

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Senator Laffen's amendment.

Date: 3/21/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Eng. HB 1055

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy		✓
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Laffen

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1055, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1055 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1055

2011 House Bill No. 1055
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
January 10, 2011

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here on behalf of WSI to provide information to the Committee to assist in making its determination.

WSI staff attended the Interim Workers' Compensation Review Committee meetings to provide input on the issues discussed during Committee meetings. WSI supports modification to the section of workers' compensation law that provides for Permanent Partial Impairment (PPI) awards. North Dakota's system for PPI awards contemplates awards stemming from work related injuries to the extent the impairment can be evaluated under the American Medical Association Guides to the Evaluation of Permanent Impairment. This publication is compiled in order to provide a standardized method to assess permanent impairments and the relative impacts those impairments comprise on an individual's ability to perform activities of daily living.

The Guides use objective and scientifically based data when available and reference these sources. When objective data is not available, estimates of impairment are based upon clinical experience and consensus of a wide variety of medical specialists.

The objective of the Guides are to provide a valid and reproducible measurement system which standardizes the relative impacts an impairment may have on an injured workers activities of daily living. They are subjected to a constant process of refinement and redefinition as medical evidence evolves and new research becomes available. North Dakota law has codified the usage of the American Medical Association's fifth edition of the Guides. Prior to this, the agency used the fourth and third editions.

PPI awards are a one-time payment based upon the measurable impairment using the techniques established in the Guides. These are converted to whole body impairments that directly correspond with the appropriate impairment multiplier, taken against one third of the states average weekly wage (\$228) to produce an award.

Awards currently range between \$2,280 and \$342,000. These awards are derived by using the permanent impairment multiplier assigned to that award level and multiplying that by one third of the state's current average weekly wage.

Currently, a whole body impairment of 22% yields an award of \$5,700. ($\228×25 permanent impairment multiplier). This award is not directly coupled to other indemnity payments.

The sixth edition to the Guides was published in 2008. It has been adopted by other jurisdictions for the rating of impairments.

WSI recently completed our Biennial Performance Review. A portion of that review recommended moving to the sixth edition of the Guides and to do so in a revenue neutral method.

Sedgwick CMS, the 2010 Performance evaluator, determined that moving from the 5th edition to the 6th would affect awards. Numerous changes have been implemented in the sixth edition which tends to create a more objective evaluation process. This tends to lower the awards overall. For example, the sixth edition does not grant awards for surgery. Medical practice presupposes therapeutic procedures are done to improve function and awarding impairment for undergoing a procedure is not accurately tied to permanent function. Similarly, joint replacement is undertaken to resolve impairment. The sixth edition ties impairment to final physical function. The fifth edition did not do so in all circumstances.

Other ratings under the sixth edition have increased. Shoulder, some hand, as well as vertebral fractures have actually increased under the rating system. It is anticipated that the number of impairments at the lower end of the rating scale will increase as well.

As a result, impairment ratings are expected to overall decrease. The overall magnitude of the shift will lower PPI costs by approximately 37% on those awards currently above 16% as rated under the fifth edition of the Guides. This amounts to approximately \$850,000, or approximately a -0.5% statewide premium level impact.

In addition, the reviewer recommended using the Guides system of rating under the sixth edition to replace WSI's system of using a separate table for rating psychological disability and pain. Adoption will nullify those rating systems, and they would be rated under the Guides. It is estimated that the change in how pain is rated under the sixth edition would result in an approximate 10% reduction of the PPI claim cost, or approximately \$260,000.

In order to make the move from the fifth to the sixth edition revenue neutral, the evaluator recommended that the award schedule be adjusted downward. Currently, initial awards begin with whole person impairments beginning at 16%. As a result, WSI has no reliable data on the frequency of impairments at levels lower than this level, because most are not rated. Therefore, accurately projecting the frequency of impairments under this level is impossible. In addition, award frequency will increase exponentially as the threshold is decreased. We expect modifying the threshold in an attempt to remain revenue neutral will affect the administrative burden of adjudicating this benefit. WSI is requesting one additional FTE with this proposal.

The 2010 Performance Review recommended the threshold be adjusted to 10%. This bill considered the recommendation and established a threshold of 14% and increases awards contained within the 14% - 25% impairment levels. The actuarial support for this target is inconclusive because supporting data doesn't exist. The Governor's Office

[REDACTED] and WSI support the 10% threshold. We believe the lower threshold is still financially responsible.

Finally, the bill also repeals the option an injured employee has to defer payment of PPI awards. Currently the law allows an injured employee to defer an award until he or she elects to receive it, or until age 65 is reached. Interest will accrue at the actuarial discount rate set by the agency. A deferred payment has been done only one time since it has been allowed by law. WSI's systems cannot easily accommodate this accounting, especially when the discount rate fluctuates. As a result, the repeal of this provision is proposed.

This concludes my testimony. I would be happy to answer any questions at this time.

PPI Award Table (effective July 1, 2010)

1055

PPI Rate (% of SAWW (\$682)):	Current Law	Proposal
	33.33%	40.00%
PPI Rate (\$):	\$228	\$273
% Increase:	na	20%

<u>Percentage Impairment</u>	<u>Multiplier</u>	<u>PPI Award</u>	<u>PPI Award</u>	<u>Change</u>	<u>% Change</u>
0	0	\$0	\$0	\$0	0%
1	0	\$0	\$0	\$0	0%
2	0	\$0	\$0	\$0	0%
3	0	\$0	\$0	\$0	0%
4	0	\$0	\$0	\$0	0%
5	0	\$0	\$0	\$0	0%
6	0	\$0	\$0	\$0	0%
7	0	\$0	\$0	\$0	0%
8	0	\$0	\$0	\$0	0%
9	0	\$0	\$0	\$0	0%
10	0	\$0	\$0	\$0	0%
11	0	\$0	\$0	\$0	0%
12	0	\$0	\$0	\$0	0%
13	0	\$0	\$0	\$0	0%
14	0	\$0	\$0	\$0	0%
15	0	\$0	\$0	\$0	0%
16	10	\$2,280	\$2,730	\$450	20%
17	10	\$2,280	\$2,730	\$450	20%
18	15	\$3,420	\$4,095	\$675	20%
19	15	\$3,420	\$4,095	\$675	20%
20	20	\$4,560	\$5,460	\$900	20%
21	20	\$4,560	\$5,460	\$900	20%
22	25	\$5,700	\$6,825	\$1,125	20%
23	25	\$5,700	\$6,825	\$1,125	20%
24	30	\$6,840	\$8,190	\$1,350	20%
25	30	\$6,840	\$8,190	\$1,350	20%
26	35	\$7,980	\$9,555	\$1,575	20%
27	35	\$7,980	\$9,555	\$1,575	20%
28	40	\$9,120	\$10,920	\$1,800	20%
29	45	\$10,260	\$12,285	\$2,025	20%
30	50	\$11,400	\$13,650	\$2,250	20%
31	60	\$13,680	\$16,380	\$2,700	20%
32	70	\$15,960	\$19,110	\$3,150	20%
33	80	\$18,240	\$21,840	\$3,600	20%
34	90	\$20,520	\$24,570	\$4,050	20%
35	100	\$22,800	\$27,300	\$4,500	20%
36	110	\$25,080	\$30,030	\$4,950	20%
37	120	\$27,360	\$32,760	\$5,400	20%
38	130	\$29,640	\$35,490	\$5,850	20%
39	140	\$31,920	\$38,220	\$6,300	20%
40	150	\$34,200	\$40,950	\$6,750	20%
41	160	\$36,480	\$43,680	\$7,200	20%
42	170	\$38,760	\$46,410	\$7,650	20%
43	180	\$41,040	\$49,140	\$8,100	20%
44	190	\$43,320	\$51,870	\$8,550	20%
45	200	\$45,600	\$54,600	\$9,000	20%
46	210	\$47,880	\$57,330	\$9,450	20%
47	220	\$50,160	\$60,060	\$9,900	20%
48	230	\$52,440	\$62,790	\$10,350	20%
49	240	\$54,720	\$65,520	\$10,800	20%
50	260	\$59,280	\$70,980	\$11,700	20%
51	280	\$63,840	\$76,440	\$12,600	20%

PPI Rate (% of SAWW (\$682)):	Current Law	Proposal
	33.33%	40.00%
PPI Rate (\$):	\$228	\$273
% Increase:	na	20%

Percentage

<u>Impairment</u>	<u>Multiplier</u>	<u>PPI Award</u>	<u>PPI Award</u>	<u>Change</u>	<u>% Change</u>
52	300	\$68,400	\$81,900	\$13,500	20%
53	320	\$72,960	\$87,360	\$14,400	20%
54	340	\$77,520	\$92,820	\$15,300	20%
55	360	\$82,080	\$98,280	\$16,200	20%
56	380	\$86,640	\$103,740	\$17,100	20%
57	400	\$91,200	\$109,200	\$18,000	20%
58	420	\$95,760	\$114,660	\$18,900	20%
59	440	\$100,320	\$120,120	\$19,800	20%
60	465	\$106,020	\$126,945	\$20,925	20%
61	490	\$111,720	\$133,770	\$22,050	20%
62	515	\$117,420	\$140,595	\$23,175	20%
63	540	\$123,120	\$147,420	\$24,300	20%
64	565	\$128,820	\$154,245	\$25,425	20%
65	590	\$134,520	\$161,070	\$26,550	20%
66	615	\$140,220	\$167,895	\$27,675	20%
67	640	\$145,920	\$174,720	\$28,800	20%
68	665	\$151,620	\$181,545	\$29,925	20%
69	690	\$157,320	\$188,370	\$31,050	20%
70	715	\$163,020	\$195,195	\$32,175	20%
71	740	\$168,720	\$202,020	\$33,300	20%
72	765	\$174,420	\$208,845	\$34,425	20%
73	790	\$180,120	\$215,670	\$35,550	20%
74	815	\$185,820	\$222,495	\$36,675	20%
75	840	\$191,520	\$229,320	\$37,800	20%
76	865	\$197,220	\$236,145	\$38,925	20%
77	890	\$202,920	\$242,970	\$40,050	20%
78	915	\$208,620	\$249,795	\$41,175	20%
79	940	\$214,320	\$256,620	\$42,300	20%
80	965	\$220,020	\$263,445	\$43,425	20%
81	990	\$225,720	\$270,270	\$44,550	20%
82	1015	\$231,420	\$277,095	\$45,675	20%
83	1040	\$237,120	\$283,920	\$46,800	20%
84	1065	\$242,820	\$290,745	\$47,925	20%
85	1090	\$248,520	\$297,570	\$49,050	20%
86	1115	\$254,220	\$304,395	\$50,175	20%
87	1140	\$259,920	\$311,220	\$51,300	20%
88	1165	\$265,620	\$318,045	\$52,425	20%
89	1190	\$271,320	\$324,870	\$53,550	20%
90	1215	\$277,020	\$331,695	\$54,675	20%
91	1240	\$282,720	\$338,520	\$55,800	20%
92	1265	\$288,420	\$345,345	\$56,925	20%
93	1290	\$294,120	\$352,170	\$58,050	20%
94	1320	\$300,960	\$360,360	\$59,400	20%
95	1350	\$307,800	\$368,550	\$60,750	20%
96	1380	\$314,640	\$376,740	\$62,100	20%
97	1410	\$321,480	\$384,930	\$63,450	20%
98	1440	\$328,320	\$393,120	\$64,800	20%
99	1470	\$335,160	\$401,310	\$66,150	20%
100	1500	\$342,000	\$409,500	\$67,500	20%



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1055
January 10, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this and all Workforce Safety hearings we are also representing five local chambers with over 5,000 members and seven employer associations. I have attached a list of those parties to my testimony for this hearing only. As a group we stand in support of HB 1055 and urge a do pass from the committee on this bill only if changed.

If we are going to adopt the 6th edition of the AMA Guides to PPI evaluation and awards the change in PPI impairment threshold from 16% to 14% is a measured and proportionate place to move the percentage. After two years experience in the next biennium we will have real data in place supporting a further reduction that can be backed up to include claimants in that biennium or see that it is set at the correct level.

Thank you for the opportunity to appear before you today in support of HB 1055. I would be happy to answer any questions.

THE VOICE of NORTH DAKOTA BUSINESS

PO Box 2639 Bismarck, ND 58502 Toll-free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
www.ndchamber.com ndchamber@ndchamber.com

2011 Engrossed House Bill No. 1055
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
March 7, 2011

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here on behalf of WSI to provide information to the Committee to assist in making its determination.

WSI staff attended the Interim Workers' Compensation Review Committee meetings to provide input on the issues discussed during Committee meetings. WSI supports modification to the section of workers' compensation law that provides for Permanent Partial Impairment (PPI) awards. North Dakota's system for PPI awards contemplates awards stemming from work related injuries to the extent the impairment can be evaluated under the American Medical Association Guides to the Evaluation of Permanent Impairment. This publication is compiled in order to provide a standardized method to assess permanent impairments and the relative impacts those impairments comprise on an individual's ability to perform activities of daily living.

The Guides use objective and scientifically based data when available and reference these sources. When objective data is not available, estimates of impairment are based upon clinical experience and consensus of a wide variety of medical specialists.

The objective of the Guides is to provide a valid and reproducible measurement system which standardizes the relative impacts impairment may have on an injured workers' activities of daily living. They are subjected to a constant process of refinement and redefinition as medical evidence evolves and new research becomes available. North Dakota law has codified the usage of the American Medical Association's fifth edition of the Guides. Prior to this, the agency used the fourth and third editions.

PPI awards are a one-time payment based upon the measurable impairment using the techniques established in the Guides. These are converted to whole body impairments that directly correspond with the appropriate impairment multiplier, taken against 35% of the states average weekly wage (\$239) to produce an award.

Awards currently range between \$2,280 and \$342,000. These awards are derived by using the permanent impairment multiplier assigned to that award level and multiplying that by one third of the state's current average weekly wage.

Currently, a whole body impairment of 22% yields an award of \$5,700. ($\228×25 permanent impairment multiplier). This award is not directly coupled to other indemnity payments.

The sixth edition to the Guides was published in 2008. It has been adopted by other jurisdictions for the rating of impairments.

WSI recently completed our Biennial Performance Review. A portion of that review recommended moving to the sixth edition of the Guides and to do so in a revenue neutral method.

Sedgwick CMS, the 2010 Performance evaluator, determined that moving from the 5th edition to the 6th would affect awards. Numerous changes have been implemented in the sixth edition which tends to create a more objective evaluation process. This tends to lower the awards overall. For example, the sixth edition does not grant awards for surgery. Medical practice presupposes therapeutic procedures are done to improve function and awarding impairment for undergoing a procedure is not accurately tied to permanent function. Similarly, joint replacement is undertaken to resolve impairment. The sixth edition ties impairment to final physical function. The fifth edition did not do so in all circumstances.

Other ratings under the sixth edition have increased. Shoulder, some hand, as well as vertebral fractures have actually increased under the rating system. It is anticipated that the number of impairments at the lower end of the rating scale will increase as well.

As a result, impairment ratings are expected to overall decrease. The overall magnitude of the shift will lower PPI costs by approximately 37% on those awards currently above 16% as rated under the fifth edition of the Guides. This amounts to approximately \$850,000, or approximately a -0.5% statewide premium level impact.

In addition, the reviewer recommended using the Guides system of rating under the sixth edition to replace WSI's system of using a separate table for rating psychological disability and pain. Adoption will nullify those rating systems, and they would be rated under the Guides. It is estimated that the change in how pain is rated under the sixth edition would result in an approximate 10% reduction of the PPI claim cost, or approximately \$260,000.

In order to make the move from the fifth to the sixth edition revenue neutral, the evaluator recommended that the award schedule be adjusted downward. Currently, initial awards begin with whole person impairments beginning at 16%. As a result, WSI has no reliable data on the frequency of impairments at levels lower than this level, because most are not rated. Therefore, accurately projecting the frequency of impairments under this level is impossible. In addition, award frequency will increase exponentially as the threshold is decreased. We expect modifying the threshold in an attempt to remain revenue neutral will affect the administrative burden of adjudicating this benefit.

The 2010 Performance Review recommended the threshold be adjusted to 10%. This bill considered the recommendation and established a threshold of 14% and increases awards contained within the 14% - 25% impairment levels. The actuarial support for this target is inconclusive because supporting data doesn't exist.

Finally, the bill also repeals the option an injured employee has to defer payment of PPI awards. Currently the law allows an injured employee to defer an award until he or she elects to receive it, or until age 65 is reached. Interest will accrue at the actuarial discount rate set by the agency. A deferred payment has been done only one time since it has been allowed by law. WSI's systems cannot easily accommodate this accounting, especially when the discount rate fluctuates. As a result, the repeal of this provision is proposed.

This concludes my testimony. I would be happy to answer any questions at this time.



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1055
March 7, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this and all Workforce Safety hearings we are also representing five local chambers with over 5,000 members and seven employer associations. As a group we stand in support of HB 1055 and urge a do pass from the committee on this bill.

If we are going to adopt the 6th edition of the AMA Guides to PPI evaluation and awards the change in PPI impairment threshold from 16% to 14% is a measured and proportionate place to move the percentage. After two years experience in the next biennium we will have real data in place supporting a further reduction that can be backed up to include claimants in that biennium or see that it is set at the correct level.

Thank you for the opportunity to appear before you today in support of HB 1055. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS

PO Box 2639 Bismarck, ND 58502 Toll-free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611
www.ndchamber.com ndchamber@ndchamber.com

HB 1055

Submitted by NDA 12-10

Element Seven – Evaluation of a Move to the 6th Edition of the AMA Guides*Introduction:*Sedgwick Report
August, 2010

The objectives of this Element are:

- To evaluate the impact of moving to the 6th Edition of AMA Guides to the Evaluation of Impairment. Currently, the State of North Dakota uses the 5th Edition of the AMA Guides to evaluate permanent partial impairment.
- To identify complications and methods for addressing them within any implementation and project the potential financial impact implementation would have.

Context:

Element Seven can be evaluated by readers of this report on its own merit, but it is also important to consider recommendations made herein along with those that follow our review of the PPI Threshold as discussed earlier in this report at Element One, Part C. That is, we present in this section recommendations pertaining solely to the impact of moving to the 6th Edition of the Guides. Element One, Part C also contains a financial impact analysis regarding a reduction in the PPI Threshold that should be considered in the context of our findings in this section.

Background:

The *AMA Guides to the Evaluation of Permanent Impairment*, published by the American Medical Association, are the most widely used criteria for determining permanent impairment. They are used by most workers' compensation jurisdictions, most often as a component in defining permanent disability awards. The Fifth Edition, published in November 2000, and the Sixth Edition, published in December 2007, reflect evolving concepts in defining permanent impairment. The *AMA Guides*, Fifth Edition, are currently used in the State of North Dakota.

As with other areas of medicine, concepts and approaches are improved with time; for example, in medicine, some treatments are found to be ineffective and are dropped from practice and new approaches are adopted. This also occurs with the medical assessment of impairment. With the change in impairment methodology, there will also be changes in impairment values associated with specific conditions. As clinical medicine evolves and there is increased efficacy of treatment, it is hoped that improved outcomes will reduce impairment previously associated with injury and illness.

The Sixth Edition introduces a new approach to rating impairment. An innovative methodology is used to enhance the relevancy of impairment ratings, improve internal consistency, promote greater precision, and simplify the rating process. The approach is based on an adaptation of the conceptual framework of the International Classification of Functioning, Disability, and Health, although many of the fundamental principles underlying the *Guides* remain unchanged.

There have been challenges associated with the use of the *Guides*, including criticisms of the *Guides* itself. Previous criticisms include the following:

- The method fails to provide a comprehensive, valid, reliable, unbiased, and evidence-based rating system.
- Impairment ratings do not adequately or accurately reflect loss of function.
- Numerical ratings are more the representation of “legal fiction than medical reality.”

In response to these criticisms, the following changes were factored into the Sixth Edition:

- Standardize assessment of activities of daily living limitations associated with physical impairments.
- Apply functional assessment tools to validate impairment rating scales.
- Include measures of functional loss in the impairment rating.
- Improve overall intra-rater and inter-rater reliability and internal consistency.

Some changes in the Sixth Edition have impacted impairment ratings. For example, impairment ratings are now included for conditions that may result in functional loss, but previously did not result in ratable impairment (such as nonspecific spinal pain and certain soft-tissue conditions). Additional impairment is typically not provided for surgical interventions, reflecting an underlying concept that treatment is designed to improve function and decrease impairment, with a focus on final outcome. Impairments associated with some diagnoses (e.g., total knee replacements, carpal tunnel release, and cervical spine fusion) were revised to more accurately reflect treatment outcomes.

The State of North Dakota, in certain circumstances, provides ratings for pain (up to 9% whole person permanent impairment) and for psychological impairments (Administrative Rules 92-01-02-25 (5)). These approaches are inconsistent with the AMA *Guides*, are unique to this jurisdiction, are controversial, and are likely to contribute to litigation.

Most ratable conditions are musculoskeletal disorders, often accompanied by pain complaints. In the Sixth Edition most impairment ratings are based on a diagnosis-based

approach with consideration of findings of function, physical examination and clinical studies. In defining the impairment values for these diagnoses pain was considered in defining the magnitude of the impairment for that diagnosis. With the Fifth Edition pain was limited to a maximum of 3% whole person permanent impairment and considerable problems were seen with inter-rater reliability. Pain is a subjective and difficult to assess and quantify.^[2] In developing the Sixth Edition there was extensive discussion and controversy about how to rate pain. The consensus was to focus on function rather than pain complaints and incorporate consideration of pain diagnoses and impact on activities of daily living. Assessment of pain-related impairment by the evaluating physician is a task complicated by two factors: (1) poorly validated criteria for certain diagnoses and (2) questions that can arise regarding the accuracy of patient self-reports.^[3] The approach of assigning impairment for subjective complaints of pain beyond that specified in the *Guides* has not occurred in any other jurisdiction that makes use of the *Guides*. The focus on pain is also inconsistent with current clinical standards which focus on function; the change in a focus on function versus subjective pain complaints results in improved clinical outcomes. Provision of impairment up to 9% whole person permanent impairment beyond the AMA *Guides* is not supportable by current accepted standards.

The assessment of psychological impairments which may accompany a work-related disorder is also controversial. The Fifth Edition is particularly problematic in this regard since it did not provide a quantitative basis for rating mental and behavioral impairment. In addition, controversy has occurred on whether certain conditions (such as pain) are most appropriately rated in the Fifth Edition using Chapter 14 (Mental and Behavioral Impairments) or Chapter 18 (Pain).

Many of the challenges the State of North Dakota faces with rating psychological impairments have been resolved with the more current Sixth Edition.^[4] The Sixth edition provides much more clarity than the Fifth Edition in determining precisely what type of impairments are rated using the Mental and Behavioral Disorders chapter (Chapter 14 in the Sixth Edition). The Mental and Behavioral Disorders chapter identifies the specific types of DSM-IV-TR diagnoses that are to be rated under the chapter. This chapter limits impairment evaluation to three categories of mental illness:

- Mood disorders (such as major depressive disorder),

^[2] Katz RT. Evaluating the Difficult Pain Patient. *Guides Newsletter*. May - June 2008.

^[3] Barth R. Examinee-Reported History Is Not a Credible Basis for Clinical or Administrative Decision Making. *Guides Newsletter*. September-October 2009.

^[4] Leclair N, Leclair S, Barth R. Assessing Mental and Behavioral Disorder Impairment: Overview of Sixth Edition Approaches. *Guides Newsletter*. November - December 2008.

- Anxiety Disorders, including generalized anxiety disorder, panic disorder, phobias, posttraumatic stress disorder, and obsessive-compulsive disorder,
- Psychotic disorders, such as schizophrenia. (Section 14.1c, p. 349).

Some ratable disorders (e.g., schizophrenia) will not be caused by an industrial injury; therefore, they would not meet the requirements of most workers' compensation jurisdictions. Chapter 14 also identifies specific DSM-IV-TR diagnoses that are not "ratable", using the Guides, 6th edition. Diagnoses that are not ratable include the following: psychiatric reactions to pain (this addresses your problems with the symptom of "depression"), somatoform disorders (which includes all types of pain disorder), dissociative disorders, personality disorders, "psychosexual disorders", factitious disorders, "substance use disorders", sleep disorders, dementia and delirium, mental retardation, and psychiatric manifestations of traumatic brain injury.

In that the *Guides* is used in North Dakota to define permanent impairment awards with a threshold determinate of 16% whole person permanent impairment (WPI), it is necessary to determine whether changes in Editions result in different impairment ratings.

Study:

To determine the impact of changes in Editions, a study was performed to determine the impairment ratings resulting from use of the Fifth and Sixth Editions. Forty cases were randomly selected from cases previously rated in North Dakota and determined to have a rating of 16% whole person permanent impairment (WPI) or greater. Twelve cases previously rated in the range of 10% to 15% WPI were also selected reflecting a total sample of fifty two cases. While the selection of individual cases was done randomly, we did factor in a range of ratings and parts of body that were representative of the overall data set from which the sample was drawn.

Using the clinical data provided in the medical records, these cases were rated by the Fifth and Sixth Editions. Each of these cases had been previously rated; the purpose of re-rating by the Fifth Edition is to determine if the original ratings were correct and if not, what the impairment rating should have been; this assisted in assessing the practical impact of changes in the rating process. If the case reflected more than one diagnosis, each diagnosis was rated, and if both extremities were involved (e.g., a bilateral carpal tunnel syndrome), each was rated as a separate diagnosis since each would be associated with a separate impairment.

The following data elements were recorded for each case:

- Claim Number
- Date of Injury (date of the ratable injury)
- Date of Rating (date of the original rating by a physician)
- Date of Birth (of patient)
- Gender (of patient)
- Clinical summary (brief)
- Final (combined) whole person permanent impairment values
 - Fifth Edition
 - Sixth Edition
- Diagnosis specific ratings
 - Diagnosis
 - ICD-9 code
 - Classification of Problem
 - Surgical treatment – no/yes
 - Fifth Edition assessment
 - Rating
 - Explanation (brief)
 - Sixth Edition assessment
 - Rating
 - Approach (e.g. Diagnosis-Based Impairment, Range of Motion, etc.)
 - Table (primary table referenced)
 - Diagnosis-based Impairments
 - Problem Type
 - Diagnosis
 - Class Assignment
 - Adjustments
 - Functional
 - Physical Examination
 - Clinical Studies
 - Grade Assignment

Results:

Ninety diagnoses were associated with these fifty two cases and the majority of the diagnoses (68%) involved surgery. The average age of the patients was 45.8 years (range, 23-76 years), and the majority were male (83%). The average time between the date of injury and date of the original impairment evaluation was 5.5 years (range, 0.7 to 41 years)

63% of the Sixth Edition ratings (57 of 90) were based on the diagnosis-based impairment (DBI) approach, 23% of the ratings were based on range of motion (extremity cases), and 14% involved other approaches. Of the DBI ratings, most (56%) were class 1 (mild problem), 16% class 2 (moderate problem), 14% class 3 (severe problem) and 14% class 4 (very severe problem).

The results of the analysis of fifty two cases are presented in Table 7.1. Summary of Case Findings.

The average whole person permanent impairment (WPI) per case was opined previously per the Fifth Edition as 24.6% and on re-rating the average was determined to be 24.2% WPI; the average rating per the Sixth Edition was 16.5% WPI, 7.7% WPI less than the Fifth Edition. The overall average whole person permanent impairment for each diagnosis was opined previously as 16.4% WPI, re-rated by the Fifth Edition as 16.0% WPI and the Sixth Edition as 10.8% WPI. Of the thirty eight cases that had been rated 16% WPI or higher by the Fifth Edition, the average rating by the Fifth Edition was 28.5% WPI, whilst the average rating by the Sixth Edition was 19.6% WPI, an average reduction of 8.9% WPI.

The difference between average whole person impairment ratings was tested using a paired sample t-test analysis, with an alpha level set at the .05 level of significance. This analysis revealed a statistically significant difference between average whole person impairment ratings when comparing the Sixth Edition with the Fifth Edition. Statistics for the Simple Linear Regression Model (constant term, beta parameter, elasticity, standard errors of parameters, parameter T-Stats, ANOVA, Durbin-Watson, Von Neumann Ratio, least squares rho, maximum likelihood rho, serial correlation, Goldberger rho, and regression plots) are presented in Figure 7.1. Statistical Analysis.

Overall there was excellent reliability between the original ratings by the Fifth Edition and the re-ratings by the Fifth Edition. There were differences between the original Fifth Edition rating and the revised Fifth Edition rating in five of the cases (10%); one case was felt to have been underrated by 1% WPI and four cases overrated by an average of 4% WPI. Among the ninety diagnoses, there was a difference in ratings in six of the cases (7%).

Of the twelve cases initially rated as under 16% WPI with the Fifth Edition, on re-rating they were all agreed to; however, upon re-rating two more cases were interpreted as having less than 16% WPI. Of all the cases of less than 16% WPI, none had impairment over 16% WPI when rated by the Sixth Edition. Of the thirty eight cases determined to have 16% WPI or greater impairment per the Fifth Edition, eighteen of these cases (47%) would have been rated under 16% WPI by the Sixth Edition.

Table 7.1. Summary of Case Findings.

Case	Fifth Rating Prior WPI%	Fifth Rating WPI%	Sixth Rating WPI%	Body Part	Injury Date	Evaluation
1	10	10	9	Multi Body	7/22/2002	6/10/2009
2	10	10	10	Other - Eyes	6/23/2005	1/10/2008
3	10	10	3	Multi Body	7/22/2006	5/17/2008
4	11	11	11	U/E - Digit(s)	12/28/2006	10/3/2008
5	23	12	8	Multi Body	10/31/2002	2/23/2008
6	12	12	10	L/E - Ankle/Foot	12/29/2005	5/17/2008
7	12	12	11	L/E - Knee	1/14/2008	7/11/2009
8	13	13	7	U/E - Shoulder	12/14/2006	6/13/2009
9	17	13	9	Spine - Lumbar	1/8/2007	6/4/2008
10	14	14	5	U/E - Shoulder	11/23/2004	9/26/2008
11	15	15	9	L/E - Knee	1/2/1984	7/8/2008
12	15	15	8	L/E - Knee	7/8/1993	7/23/2008
13	15	15	8	L/E - Hip	1/22/2007	1/30/2008
14	15	15	7	Multi Body	7/26/2007	9/25/2009
15	16	16	12	Spine - Lumbar	7/30/2000	4/17/2009
16	17	17	15	Spine - Lumbar	6/21/2005	10/14/2009
17	17	17	7	U/E - Wrist	3/2/2007	7/23/2008
18	19	19	13	L/E - Ankle/Foot	5/27/1998	5/16/2009
19	19	19	9	Multi Body	10/26/2005	8/15/2009
20	20	20	12	L/E - Knee	9/18/2003	7/19/2008
21	22	20	5	L/E - Ankle/Foot	5/11/2004	5/17/2008
22	20	20	7	Spine - Lumbar	5/25/2005	1/16/2008
23	20	20	8	Spine - Lumbar	11/6/2006	4/12/2008
24	20	20	9	L/E - Hip	12/7/2007	4/22/2009
25	20	20	14	L/E - Hip	3/1/2008	11/19/2008
26	20	21	9	Multi Body	5/29/2007	4/1/2009
27	21	21	8	U/E - Multiple	7/24/2007	5/21/2009
28	24	22	17	Multi Body	3/16/2004	6/25/2008
29	22	22	16	U/E - Shoulder	8/1/2004	4/23/2008
30	22	22	17	Multi Body	1/11/2007	5/17/2008
31	23	23	27	Spine - Lumbar	8/10/1999	3/29/2008
32	23	23	16	Spine - Multiple	12/14/2004	5/13/2009
33	23	23	25	U/E - Multiple	5/19/2008	7/21/2009
34	24	24	14	Multi Body	5/29/2004	1/16/2008
35	25	25	18	U/E - Wrist	11/15/2006	6/10/2009
36	28	28	25	Spine - Lumbar	5/19/2006	9/17/2008
37	30	30	26	L/E - Multiple	11/22/2004	3/29/2008
38	30	30	15	Spine - Cervical	8/22/2005	3/17/2009

Case	Fifth Rating Prior WPI%	Fifth Rating WPI%	Sixth Rating WPI%	Body Part	Injury Date	Evaluation
39	30	30	25	L/E - Hip	9/25/2006	6/14/2008
40	30	30	30	U/E - Digit(s)	2/25/2008	4/22/2009
41	31	31	14	Spine - Multiple	1/8/1990	4/6/2009
42	31	31	27	Spine - Lumbar	10/13/1997	3/29/2008
43	31	31	18	Multi Body	4/28/2007	7/8/2009
44	32	32	32	U/E - Digit(s)	11/4/2006	1/6/2009
45	34	34	16	Spine - Multiple	2/16/2005	4/23/2008
46	34	34	9	Spine - Multiple	5/19/2005	2/5/2009
47	35	35	15	L/E - Knee	9/12/2001	9/20/2008
48	36	36	32	Multi Body	9/11/1995	12/10/2008
49	36	36	39	Spine - Cervical	2/7/2006	9/17/2008
50	49	49	23	Multi Body	12/9/1992	10/14/2009
51	56	56	29	Spine - Multiple	1/9/1968	6/3/2009
52	96	96	91	Spine - Cord	9/15/2006	3/29/2008

Figure 7.1. Statistical Analysis

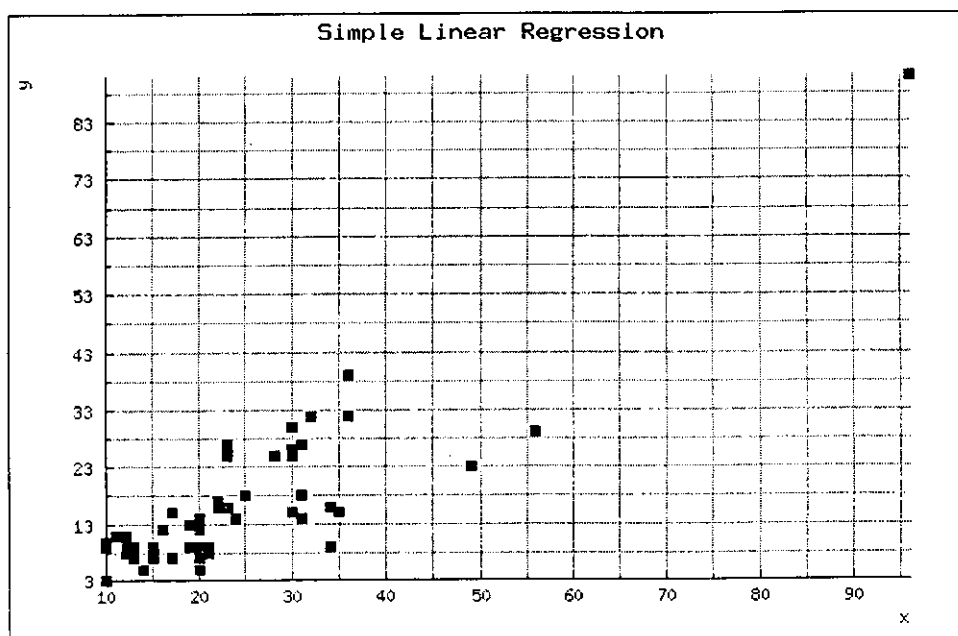
Where x = Fifth Edition ratings and y = Sixth Edition ratings, the following statistics were determined:

Simple Linear Regression - Ungrouped Data				
Parameter	Value	S.E.	T-STAT	Notes
Constant	-3.758817			
Beta	0.836872	0.066735	12.540273	H0: beta = 0
Elasticity	1.227542	0.097888	2.324513	H0: elast. = 1

Simple Linear Regression - Analysis of Variance			
<u>ANOVA</u>	DF	Sum of Squares	Mean Square
Regression	1.000000	7008.608204	7008.608204
Residual	50.000000	2228.372565	44.567451
Total	51.000000	9236.980769	181.117270
<u>F-TEST</u>	157.258448		

Simple Linear Regression - Autocorrelation	
Statistic	Value
Durbin-Watson	1.357250
Von Neumann Ratio	1.383862
rho - Least Squares	0.267282
rho - Maximum Likelihood	0.281575
rho - Serial Correlation	0.261460
rho - Goldberger	0.274335

Simple Linear Regression - Descriptive Statistics	
Statistic	Value
Mean X	24.230769
Biased Variance X	192.446746
Biased S.E. X	13.872518
Mean Y	16.519231
Biased Variance Y	177.634246
Biased S.E. Y	13.327950
Mean F	16.519231
Biased Variance F	134.780927
Biased S.E. F	11.609519
Mean e	0.000000
Biased Variance e	42.853319
Biased S.E. e	0.925779



Spinal impairments were most common, reflecting 36% of the ratable diagnoses, as shown in Table 7.2.

Table 7.2. Comparison of Average Whole Person Permanent Impairment Ratings by Sixth Edition Chapters

Chapter	Title	Fifth Prior WPI%	Fifth WPI%	Sixth WPI%	Difference WPI%	Count
12	Visual System	10.0	10.0	10.0	0.0	1
13	Nervous System	26.3	26.0	20.1	-5.9	8
14	Mental and Behavioral Disorders	20.0	20.0	14.0	-6.0	1
15	Upper Extremities	11.5	11.5	8.1	-3.4	22
16	Lower Extremities	15.2	14.7	9.8	-4.8	26
17	Spine	18.2	17.7	10.9	-6.8	32

Findings by regions are summarized in Table 7.3 for regions with 3 or more ratings.

Table 7.3. Comparison of Average Whole Person Permanent Impairment Ratings by Regions

Region	Fifth Prior WPI%	Fifth WPI%	Sixth WPI%	Difference WPI%	Count
Nervous System - Spinal Cord	33.8	33.8	26.0	-7.8	6
Upper Extremity - Hand	15.5	15.5	16.3	0.8	4
Upper Extremity - Wrist	16.3	16.3	10.0	-6.3	3
Upper Extremity - Shoulder	10.5	10.5	6.5	-3.9	11
Lower Extremity - Ankle/Foot	9.7	9.4	4.4	-5.0	7
Lower Extremity - Knee	16.9	16.9	12.1	-4.8	10
Lower Extremity - Hip	17.6	15.2	10.2	-5.0	6
Lower Extremity - Other	18.3	18.3	14.3	-4.0	3
Spine - Cervical	24.8	24.8	12.2	-12.6	9
Spine - Thoracic	9.7	9.7	4.3	-5.3	3
Spine - Lumbar	16.6	15.7	11.3	-4.4	20

With the Sixth Edition there were meaningful changes in impairment ratings as a result of not providing additional impairment for surgical (therapeutic) spine procedures and improved outcomes with total knee and hip replacement.

Table 7.4 illustrated the differences in ratings between the Fifth and Sixth Editions based on the value of a rating by an earlier edition; data presented are based on observations by case and diagnosis.

Table 7.4. Change in Impairments Compared With Fifth Edition Ratings, by Range

Fifth Edition Rating, %	No. of Cases	Fifth Edition Average, %	Sixth Edition Average, %	Difference Average, %
10-15	14	12.6	8.2	4.4
16-20	11	18.9	10.1	8.8
21-25	10	22.6	16.7	5.9
26-30	5	29.6	24.2	5.4
31-40	19	33.3	22.4	10.9
>40	3	67.0	47.7	19.3

These findings were similar to those found in a study involving the rating of two hundred cases using the Fourth, Fifth and Sixth Editions of the *AMA Guides*.⁴ In that study, which included a sample of cases that included zero ratings, the average whole person permanent impairment (WPI) per case was 6.3% WPI per the Fifth Edition and 4.8% WPI per the Sixth Edition. Of the twenty one cases in that study where the average WPI was greater than 16% WPI, the average Fifth Edition rating was 23.5% WPI, whilst the average Sixth Edition rating was 13.5% WPI, 10% WPI less. The changes observed in that study by the value of the Fifth Edition Rating are provided in Table 7.5.

Table 7.5. Change in Impairments Compared With Fifth Edition Ratings by AMA Guides Comparative Study - 200 Cases

Fifth Edition Rating, %	No. of Cases	Fifth Edition Average, %	Sixth Edition Average, %	Difference Average, %
10-14	15	11.9	9.6	2.3
15-19	8	16.5	12.9	3.6
20-24	8	20.9	9.6	11.3
25-29	6	26.2	15.0	11.2
≥30	2	41.5	25.5	16

⁴ Brigham CR, Uejo C, McEntire A, Dilbeck L. Comparative Analysis of *AMA Guides* Ratings by the Fourth, Fifth, and Sixth Editions. *Guides Newsletter*. January - February 2010.

Summary:

There is a statistically significant difference between average whole person impairment ratings when comparing the Sixth Edition with the Fifth Edition. Of the thirty eight cases that had been rated 16% WPI or higher by the Fifth Edition, the average rating by the Fifth Edition was 28.5% WPI, whilst the average rating by the Sixth Edition was 19.6% WPI, an average reduction of 8.9% WPI. This magnitude of change is consistent with changes seen in twenty one cases rated more than 16% WPI by the Fifth Edition by an earlier study. Of the cases rated 16% WPI or greater by the Fifth Edition in this study, 47% would have been rated under 16% WPI by the Sixth Edition.

Many of the more meaningful changes were for spine-related diagnoses that resulted in surgery, reflecting the Sixth Edition approach, which bases impairment ratings on the condition and outcome, rather than therapeutic interventions including surgery. Changes in values with the Sixth Edition were expected and primarily due to the recognition that (1) surgery and all therapeutic endeavors should improve function and therefore should not routinely increase impairment, and (2) there are improved functional outcomes for certain disorders, including total joint replacement.

Finally, WSI actuarial consultants were asked to project the overall financial impact of moving from the 5th Edition to the 6th Edition absent any change in the PPI threshold. Their assessment is provided in Exhibit 7.1. Their conclusion is that PPI benefits would decline by approximately \$1.1 million annually with the adoption of the 6th Edition.

Recommendations:

Recommendation 7.1: The most recent Edition, i.e. the Sixth Edition, of the *AMA Guides to the Evaluation of Permanent Impairment* should be used to determine impairment, including physical, pain and mental health and behavioral impairments.

Priority Level: High

WSI Response: Concur. The *6th Edition of the AMA Guides to the Evaluation of Permanent Impairment* is the latest version of the Guides and is the result of the evolution of medical science as well as research based medicine. The 6th Edition provides for a rating method not available in prior editions for mental and behavioral health impairments and a more explicit method of rating pain.

Recommendation 7.2: Implementation of the Sixth Edition should include training of the evaluating physicians and others to understand how to perform accurate ratings. Training should be followed by testing of competency on the use of the Sixth Edition.

Priority Level: High

WSI Response: Partially Concur. WSI will arrange for training in the use of the 6th Edition. WSI will to the extent possible only use providers who have completed 6th Edition training. WSI does not intend to require certification or require testing due to the onerous nature of this certification process. It is anticipated that so few will participate that this requirement would impair our ability to establish a broad enough pool of evaluators.

Recommendation 7.3: The assessment and any rating of pain should be consistent with the processes defined in the most recent Edition of the *Guides* (currently the Sixth Edition). If pain accompanies objective findings of injury or illness that permits rating using another chapter in the *Guides*, than pain-related impairments are not used as “add-ons” and pain impairments are limited to a maximum 3% whole person permanent impairment.

Priority Level: High

WSI Response: Concur. The 6th Edition provides for a more explicit and accurate method of rating pain than available in prior editions or the current administrative rules.

Recommendation 7.4: Mental and behavioral impairments, when rated, should be performed consistent with the processes defined in the most recent Edition of the *Guides* (currently the Sixth Edition).

Priority Level: High

WSI Response: Concur. The 6th Edition provides for a rating method not available in prior editions for mental and behavioral health impairments.

I. Facts and Background

Tina Brennan sued for personal injury arising from an electric shock she received from a coffee maker while working as a waitress. She brought suit against Reinhart, as Reinhart had supplied the coffee machine to her employer and a Reinhart employee installed it. She allegedly developed fibromyalgia from the resulting shock. During the course of the trial, the district court¹ allowed Brennan's vocational rehabilitation counselor, Rick Ostrander, to mention hearsay statements by Brennan's physicians in expressing his opinion as to her probable loss of employability and earning capacity due to her injuries.

During the course of Ostrander's testimony, he stated Dr. P. James Eckhoff, Jr., a rheumatologist, had earlier reported Brennan "as having a permanent partial impairment of eleven percent of the whole person." (Tr. at 323.) Ostrander also noted that Brennan had been treated by Dr. Myung J. Cho, a specialist in physical medicine and rehabilitation, and she was independently evaluated by Dr. Chris Tountas. Reinhart objected to Ostrander's statements as referring to hearsay that was not in evidence and not subject to cross-examination. The district court overruled the objection on the grounds that an expert can rely on matters not in evidence in forming an opinion. Ostrander then explained that Dr. Eckhoff's and Dr. Cho's reports that Brennan suffered a permanent partial impairment of eleven percent were "significant to [him] as a vocational rehabilitation specialist because [they] indicate[] a medical opinion of a permanent condition; one that is not likely to get substantially better or worse in the future." (Tr. at 324.) Additionally, Ostrander referred in his opinion to a functional capacities evaluation administered to Brennan by an occupational therapist. Reinhart objected on the same grounds, and, again, the district court overruled the objection. The jury found for Brennan, and she received a jury verdict of \$256,000.

¹The Honorable Lawrence L. Piersol, Chief Judge, United States District Court for the District of South Dakota, presiding.

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 99-1944

Tina Brennan,

Plaintiff-Appellee,

v.

Reinhart Institutional Foods;

Defendant-Appellant,

Bunn-O-Matic, Inc.,

Defendant.

*

*

*

*

*

*

*

*

*

*

*

*

*

Appeal from the United States
District Court for the
District of South Dakota.

Submitted: February 16, 2000

Filed: April 26, 2000

Before McMILLIAN, LAY, and JOHN R. GIBSON, Circuit Judges.

LAY, Circuit Judge.

Reinhart Institutional Foods (Reinhart) appeals the district court's admission of hearsay through the expert testimony of a vocational rehabilitation counselor. Because we feel the decision to admit the evidence is supported by Federal Rule of Evidence 703, we affirm.

mail Aug 21 2010



August 17, 2010

ND WORKFORCE SAFETY & INSURANCE
1600 E CENTURY AVE, STE 1
PO BOX 5585
BISMARCK ND 58506-5585

RE: DANIEL FINNEMAN
DOB: 04/04/1959
WSI CLAIM #: 1995-450583T)

To Whom It May Concern:

I am writing concerning my patient, Mr. Dan Finneman, at this time. I have been seeing Mr. Finneman for many years. His last surgery was in 2003. At this time I would consider the patient to be at maximal medical improvement. Therefore, he should qualify for a PPI evaluation.

Yours sincerely,

Michael P. Martire, MD
Medical Director

MPM/nv
D:08/17/2010
T:08/21/2010
Copy to: Mr. Daniel Finneman

Michael P. Martiré, MD

Board Certified
Diplomate and Fellow:

Physical Medicine
and Rehabilitation

American Academy
of Electrodagnosis

American Academy
of Pain Medicine

Affiliations:

Physiatric Association of
Spine, Sports and
Occupational Rehabilitation

American Pain Society

Myofascial Pain Society

North American
Spine Society

Specializing in:

Physiatric Spine Care

Sports Rehabilitation

Electrodagnosis (EMG/NCS)

Muscle and Nerve
Injuries/Pain

Industrial Musculoskeletal
Medicine

Myofascial Pain/Fibromyalgia

Cumulative Trauma Disorders

Chronic Pain Management

MAILED
8-24-10

Page 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1055

Page 3, line 25, replace "thirteen" with "fifteen"

Renumber accordingly