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April 25, 2008

Rick Berg
North Dakota State Representative**Subject:** Marsh's Response to Additional Inquiries Regarding Audit Findings

Dear Mr. Berg:

Per your request, Marsh is happy to provide additional information to clarify our findings regarding the audit report we delivered and presented on March 5, 2008. I refer you to page 67 of the report in which Marsh found denied claims to be appropriately handled in 86% of the applicable cases. Thus, that means 14% of the claims were questionable denials. As cited on page 67 of the report, those questionable denials consisted of lack of documentation, interpretation of "arising out of and/or in the course of employment, medical documentation, pre-existing injury triggers, and/or possible fraud interpretations.

Secondly, any remarks I made pertaining to a "handful" of cases being questionable denials stems from the audit findings being evaluated based on industry practices. Industry standards were cited in the report as following: below 85% representing improvement opportunities, 85% to 90% as meeting requirements, and a score of greater than 90% as exceeding requirements. In Marsh's experience, the standards cited above represent the "bar" the industry uses to evaluate their claim management operations.

I would add that Marsh's audit findings represent our findings – and not those of anyone else. Marsh believes in the integrity of its body of work and does not take lightly its reputation in the consulting industry.

Lastly, I have provided a summary (see attachment) of the findings of the twelve denied claims in which Marsh felt the denials were questionable, for your review and reference. The comments captured in the attachment represent the Marsh auditor's actual notes on each individual audit sheet. These audit sheets were also provided previously to the state auditor's office at its request. To protect the confidentiality of the parties involved, I did not provide any claim numbers on the attachment.

I am hopeful this information will provide you with the clarity you need to move forward and work toward improving WSI.

MARSH



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Sincerely,

Anthony M. Walker
Project Leader
Claim Advocacy Practice Leader
Senior Vice President

WSI Summary of Questionable Denied Claims

Marsh's Findings (taken from audit sheets)	WSI State Statute Interpretation
<p>Based upon the medical documentation, the indication is that he had an aggravation and was taken off work. He was not taken off work or put on restrictions due to the prior personal injury. I did not see any comments in the file regarding the re-injury on XXX. Further, he was injured while at work working outside of his restrictions [REDACTED] XXXXXXXXXXXXXXXXXXXXXXXX - additional evidence for reason to accept the claim as a temporary aggravation of a pre-existing condition - see medical report of XXXX.</p>	Pre-existing injury
<p>The law says the job has to be a 50% contributing factor and the circumstances unusual to the employment. XX would constitute at least a 50% contributing factor and unusual to the employment. This case was appealed and an order was issued in favor of the denial.</p>	The job has to be a 50% contributing factor and the circumstances unusual to the employment.
<p>However, the statute requires that the use of XXXXXXXXXXXXXXXXXXXXXXXX be the cause of the injury. The denial letter says it is the presumed cause. There was no investigation into how the use of an XXXXXXXXXXXXXXX caused the injury and no information as to the XXXXXXXXXXXXXXX in his system. He did not appeal the denial. The denial letter states that because the employee XXXXXXXXXXXXXXXXXXXXXXX his injury was "presumed" to have been "caused" by this. The statute reads "caused by". There is no investigation into how the XXXXXXXXXXXXXXX. The employee did not appeal. The supervisor made no comments on the denial and the adjuster did not get approval of the denial as she is not a sr adjuster or advanced adjuster.</p>	If the use of alcohol or an illegal substance is the cause of the injury then the case is considered not compensable..
<p>I don't see any comments in the notes from the adjuster indicating that the XXXXXXX testing was even reviewed. It clearly states that "It should also be noted that the presence of XXXXXXX should be considered significant in terms of possible health issues." The dr's note says the reaction is most likely due to the XXXXXXX. There seems to be a fairly clear connection between the XXXXXXX supported by the XXXXXXX testing. The adjuster did not appear to have reviewed the testing document as there was no comments about it in the notes.</p>	Arising out of and/or in the course of employment

WSI Summary of Questionable Denied Claims

Marsh's Findings (taken from audit sheets)	WSI State Statute Interpretation
<p>It cannot be determined based on the notes in the file and the FROI that was filed, it makes no sense. The notes in the file do not address the claim that was submitted. This claim reflects a receipt date of XXXXXXXX. However, the FROI was received on XXXX along with medical notes. The claim was accepted as a MO, procedures were going through UR. The MO adjuster was talking with the employer about RTW. The original claim on FROI came in as a XXXXXXXXXXXXXXXXXXXXXXXXXXXX. In XXXX the notes in the file begin to discuss XXXXXXXXXXXXX, discuss a prior claim for XXXXXXXXXXXXX, but nothing about the XXXXXXXXXXXXX. The notes do not tell the story of the claim and it is impossible to determine if this claim was accpeted, denied or somewhere in between.</p>	<p>Lack of information</p>
<p>minimal attempts to contact the IW</p> <p>This is a questionable denial. There is a question of fact that would favor this claim being overturned if it were to be challenged or appealed. I question the denial issued on this file by the WSI adjuster. The WSI issued a denial on this file on the grounds that there were inconsistencies with the IW statements on the first report of injury form and the statements provided to the adjuster. The denial letter to the IW stated in partThere is not enough information to prove that you sustained an injury from work. The WSI adjuster also indicated that the IW employers and the IW acknowledge that he had a XXXXXXXXXXXX. They also base the denial on the fact that there is medical information in the file that indicates that the IW XXXXXXXX started a week before he reported the injury on XXXXXXXX. They further indicates that the IW description of his injury to his doctor indicated that his XXXXXXXXXXX in but on the FROI he indicated that his injury was from XXXXXXXXXXXXXXXXXXXX. Initial treatment was for XXXX, but then the IW started to treat for XXXXXXXXXXXXXXXXXXXX..</p>	<p>Arising out of and/or in the course of employment</p>
<p>This claim is anothe trigger type claim denial and the WSI denial was based on the review of the IW prior medical records. The WSI denied this claim on the basis that the IW had not proven that the work incident XXXXXXXX was the cause of the medical treatment sought by the IW staring XXXXX. The claimants surgery with XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Additionally, the WSI based its decision on the fact that medical notes from the IW XXXX records indicates that he had degenerative changes in the XXXXXXXX and he had indicated periodic ongoing problems with his XXXX.</p>	<p>Arising out of and/or in the course of employment</p>
<p>The WSI denial is based in part that the IW had not met his burden of proving an injury at work. I disagree. Claim denied on the basis that the IW has not proven a work related injury. However, this auditor believes that there is possible question of facts in connection with this IW claim. There appears to be inconsistencies from the employer as reflected in the adjuster's notes.</p>	<p>Arising out of and/or in the course of employment</p>
<p>There needs to be an explanation as to the jurisdictional question in the file notes. It impossible to determine if the denial is appropriate or not without that information on this claim.</p>	<p>Lack of information</p>

WSI Summary of Questionable Denied Claims

Marsh's Findings (taken from audit sheets)	WSI State Statute Interpretation
Even though the claimant had a history of XXXXXXXXXX I think due to a specific incident at work relates this to the work as stated by XXXXXXXX.. Adjuster did a good job handling the claim. Good documentation and follow-up. There were some concerns regarding this denial by supervision and I would tend to agree with them. First, the medical director said this would be a close call. Second you have the treating doctor stating it was work related. Third, the aggravation was caused by a specific incident.	Pre-existing injury
No C16 employee signed form utilized by the claim handler regarding the pre-existing history denial. Questionable denial based on claim handler's interview of claimant over the phone and his denial of benefits. C16 form not received from the claimant prior to the denial.	Pre-existing injury and/or possible fraud implications