



Workforce Safety
& Insurance
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North Dakota Workers' Compensation

A Historical Overview
for the Legislative
Review Committee

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Terms that WSI uses

- **TTD---Temporary Total Disability**
(wage-loss replacement when an injured employee is unable to work temporarily)
- **TPD---Temporary Partial Disability**
(partial wage-loss replacement when an injured employee cannot fully return to work)
- **PTD---Permanent Total Disability**
(wage-loss replacement when an injured employee cannot return to work)
- **Supplementary Benefits or “Sups”**
(wage-loss benefit modifier for PTD beneficiaries or COLA after a specified waiting period)



More Terms

- **COLA**--- **Cost of Living Adjustments**
- **SAWW**---**State's Average Weekly Wage** (calculated by Job Service North Dakota, it is currently \$567 and will rise to \$593 on July 1, 2007)
- **AWW**---**Average Weekly Wage of the Injured Employee** (wages an injured employee was earning at the time of disability)
- **PPI**---**Permanent Partial Impairment Awards** (a one-time cash award based upon an injury severity rating system)



More Terms

- **ABP---Additional Benefit Payable**

Post-retirement benefits that are given to injured employees upon their presumed retirement from the system to compensate for the lost contributions to social security retirement.

- **Death Benefits**

Wage-loss benefits paid to a surviving spouse and/or dependents based on the deceased worker's wages and capped at \$250,000 (additionally there is up to a \$20,000 Guardian Scholarship for each surviving dependent and spouse)



More Terms

- **Vocational Rehabilitation**
- Vocational planning and rehabilitation includes wage-loss and school costs if appropriate.
- The goal is to return an injured employee to the workforce as rapidly as possible.



More Terms

- **PRB---Post Rehabilitation Benefit.**

These are partial wage-loss benefits for injured employees who have completed retraining programs and progress in their rehabilitation to “full-time” employment. These benefits can extend up to one year.

- **CAT Claims---Catastrophic Injuries.**

These are employees with the most severe injuries including paraplegia, quadriplegia, amputees, total blindness or severe closed-head injuries.



Issues and Results of Debates

WSI is an Insurer of Work-Related Injuries

- Persistent conditions, injuries, diseases
- Repetitive motion
- Aging workforce
- We are not a general healthcare insurer
- We are not a social welfare agency



Issues and Results of Debates

WSI Pays for Wages Lost Due To Compensable Condition

- 66 two-thirds percent of gross wages
- Dependency Allowances of \$10 per week per dependent
- The maximum weekly benefit is capped 110% of the SAWW which is currently at \$653 per week as of 7/1/2007
- Bad policy to pay injured employees more to be off work than on work



Issues and Results of Debates

Injured Employees Will Return to Work

- Following injury, WSI pays wages and medical benefits
- The primary objective is to return employee to work
- Only proven method is using compliance incentives and consequences
- Best outcome is the one with the least amount of intervention as possible



Issues and Results of Debates

The Fund is NOT a Retirement System

- The age at which you either draw social security retirement (SSR) or when you are fully eligible and able to participate in SSR, your wage-loss benefits end
- ABP (Additional Benefit Payable)—post-retirement benefit, begins to cover any anticipated losses from the lack of payments into the social security retirement system



Issues and Results of Debates

Medical Benefits are Provided for Compensable Conditions

- WSI must effect the best, most cost-effective medical treatment in all cases
- Essentially WSI is a managed-care system for both treatments and prescriptions



Issues and Results of Debates

False Statements or False Claims to Gain Benefits is Unlawful

- If fraud is determined, no more benefits on the claim, either medical or wage-loss will be paid
- There are criminal consequences possible as well for employers, employees and medical providers



Issues and Results of Debates

Attorney Fees Payable if Successful

Injured employees' attorney fees are payable only if successful and only to established caps



One System, Three Benefit Structures

Pre-1995

1995-2006

Post-2006



Pre-1995

- No retirement presumption (benefits for life)
- No caps on duration of TTD
- 10-year waiting period for SUPS
- SUPS paid up to 60% of SAWW
- No TPD Caps
- False claim statute had no teeth
- Vocational statute had little teeth
- Attorney fees paid win or lose, no caps
- Hearing Officers non-law trained



1995-2006

- Retirement Presumption and ABP benefits
- No cap TTD
- 2 strikes in Vocational Rehabilitation
- False statements closed claim for life
- SUPS shortened to 7 years but paid based on AWW
- Medical manage care implemented
- TPD capped at 5 years



Post 2006

- TTD capped at 2 years
- Retraining now optional
- 3-year waiting period for SUPS
- Due to TTD cap, Vocational Rehabilitation has more teeth
- Expanded benefits to the most severely injured
- Changed definition for PTD to objective standard



2007 Legislation

▪ HB 1038

- Provides \$100,000 lifetime benefit for vehicle purchase or adaptation
- Alternative ABP calculation
- Surviving spousal benefits in death claims
- Changing to revolving loan fund
- Shortens COLAs for supplementary benefits



2007 Legislation

- 1411

- Provides \$100,000 lifetime benefit for vehicle purchase or adaptation for certain PTD claims

- 1140

- Provides an annual lump-sum inflationary adjustment for long-term for temporary partial disability cases



Areas of Concern

- Over time legislation erodes
- Constant challenges and tests
- Expose or create openings or loopholes
- Enforcement changes to meet those expansions



Attorney Fees

- Available if injured employee wins
 - Capped at 20 percent
 - Or caps set by rule
 - Since 1995
- Rojas case 2006 ND 221
 - 65-02-08 in place since 1995
 - 28-32-50 allows fee cap to be exceeded based on “justification test” by District Court



Challenges to 5 year Cap on TPD

- 65-05-10

--5-year cap but WSI may waive cap if injured employee a) is released less than 28 hours per week and is working or b) has a catastrophic injury

--Recent cases have shown a concerning trend

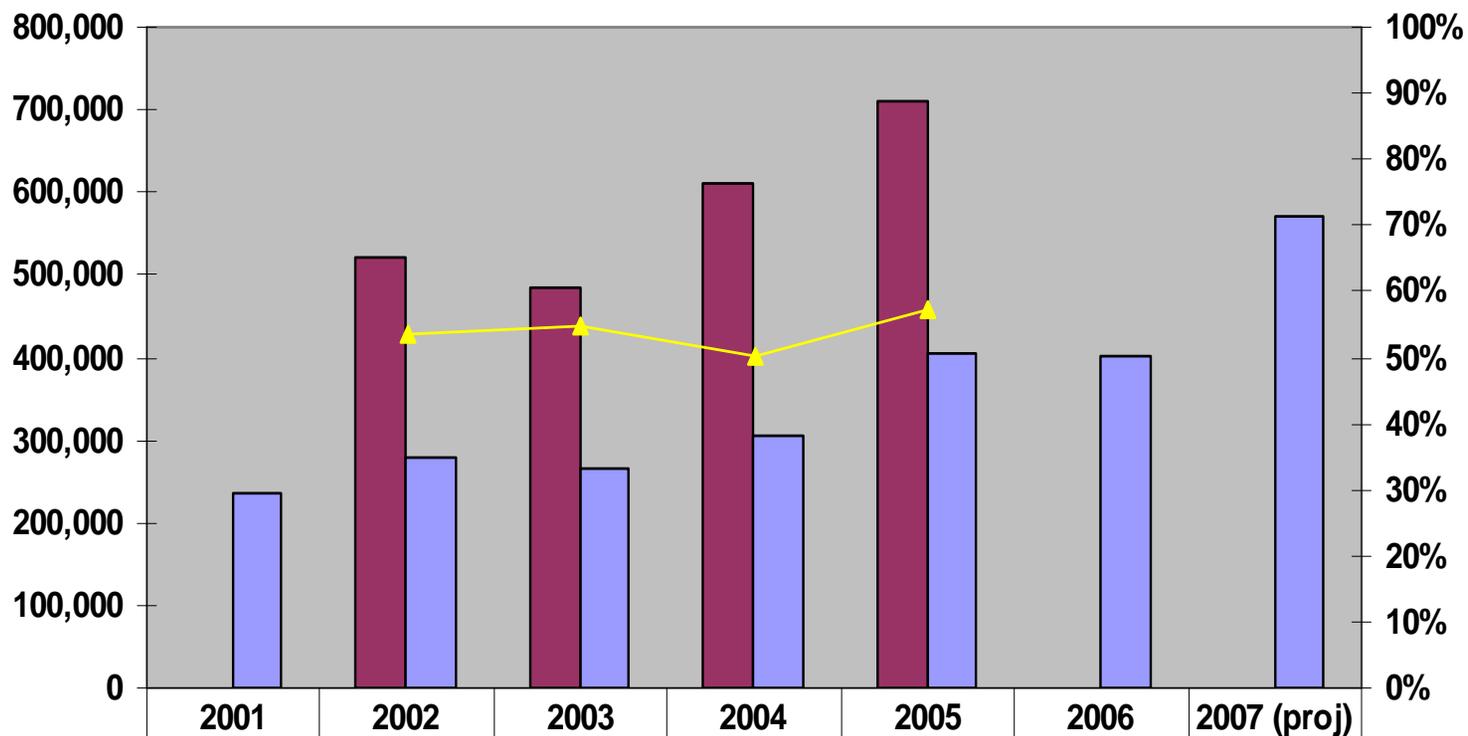


Concerns with Office of Administrative Hearings

- Injured employees waiting too long for decisions
- Costs rising



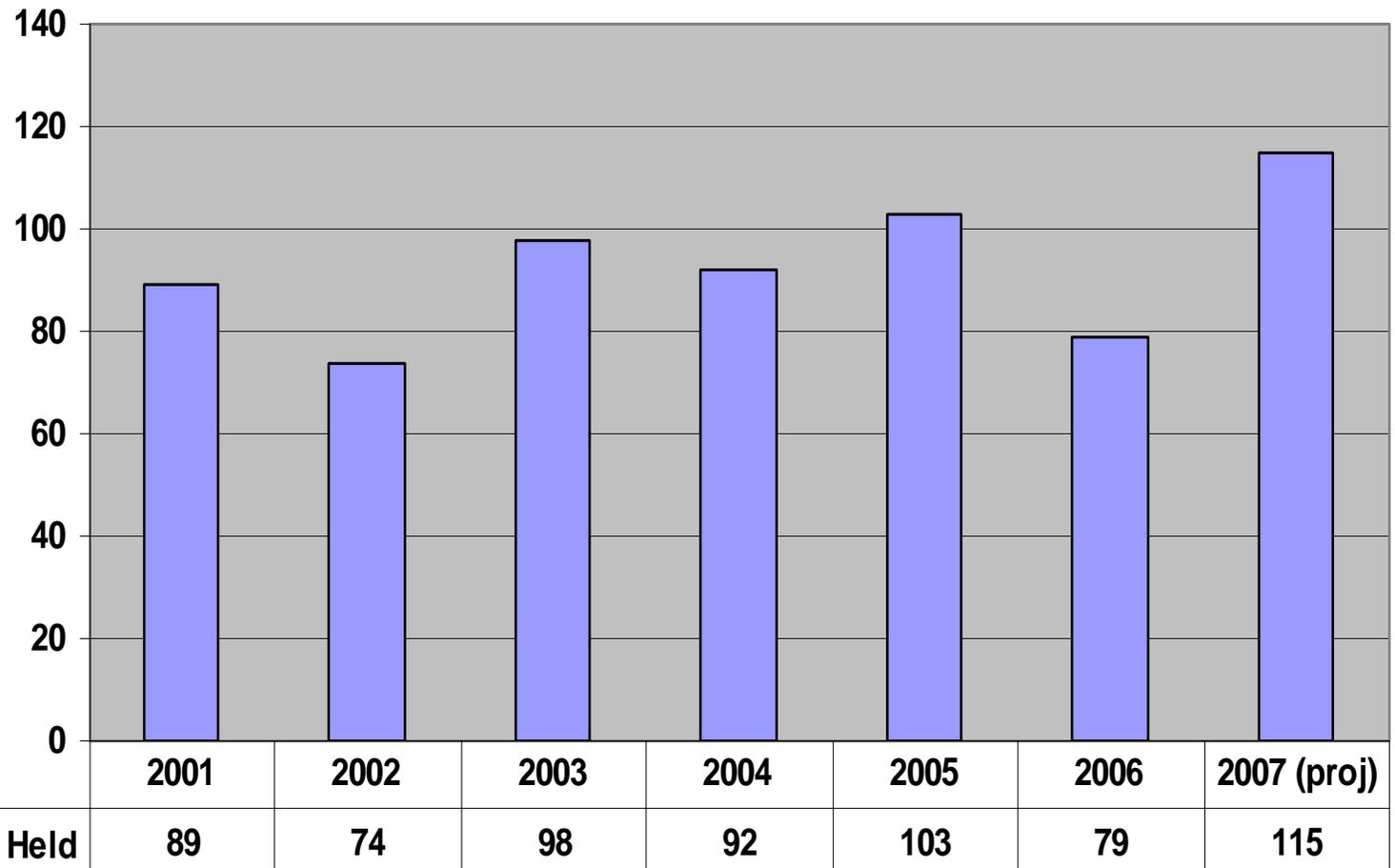
OAH Revenues vs WSI Payments



 OAH Revenues*		\$521,360	\$483,625	\$610,123	\$710,007		
 WSI Payments	\$235,915	\$279,132	\$264,753	\$305,398	\$405,227	\$402,011	\$571,214
 WSI % of Revenues		54%	55%	50%	57%		

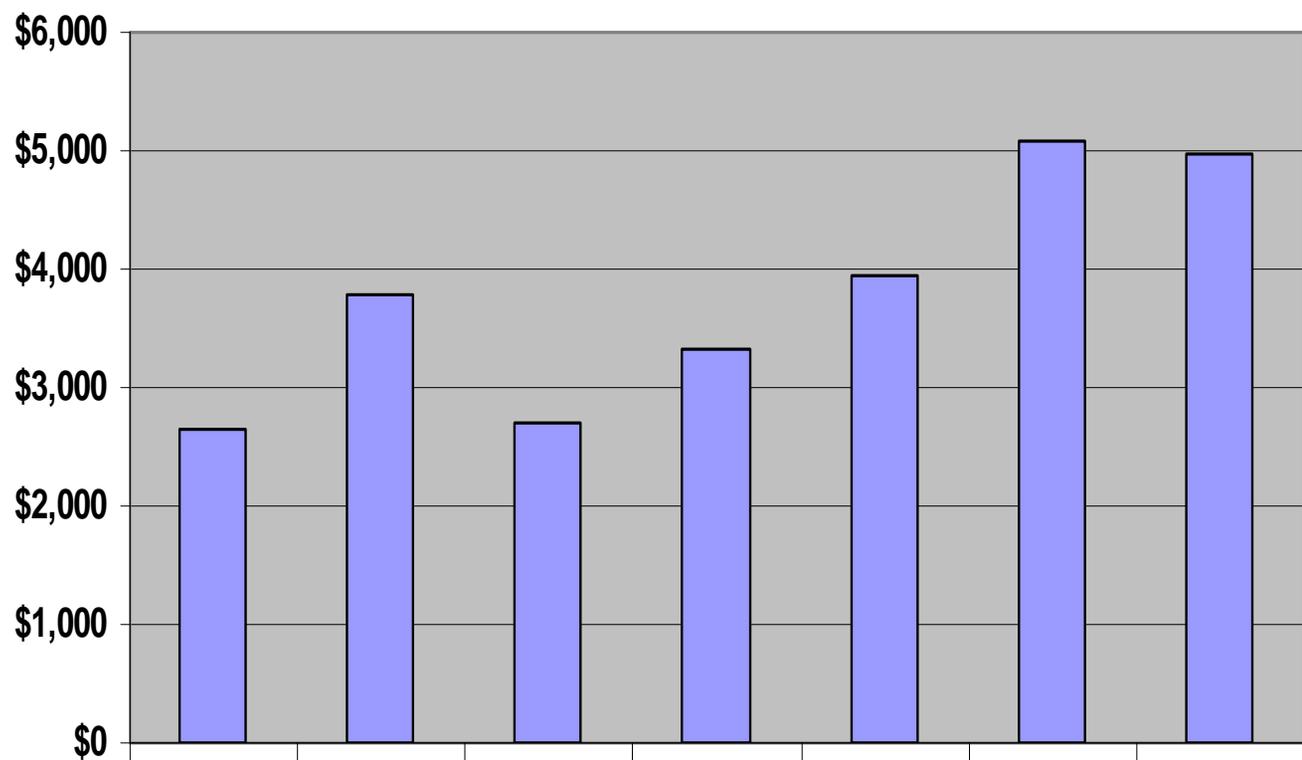


WSI Hearings Held





Approximate Avg Cost of Hearing



■ Approx. Avg Cost of Hrg

\$2,651

\$3,772

\$2,702

\$3,320

\$3,934

\$5,089

\$4,982



OAH Average Hours/Hearing

