

**Sunset Public Hearing Questions for  
ADVISORY COUNCIL ON WORKERS' COMPENSATION**  
Created by Section 50-6-121, *Tennessee Code Annotated*  
(Sunset Termination June 2021)

**1. Provide a brief introduction to the Advisory Council, including information about its purpose, statutory duties, staff, and administrative attachment.**

The Advisory Council on Workers' Compensation, created pursuant to T.C.A. § 50-6-121, provides information, research, and recommendations concerning workers' compensation issues to the Governor, the Tennessee General Assembly, the Department of Commerce and Insurance, the Department of Labor and Workforce Development (DLWFD), and the Bureau of Workers' Compensation (BWC).

The Advisory Council may monitor the performance of the workers' compensation system generally and after implementation of new legislation. It may make recommendations for the adoption of rules and legislation and regarding the method and form of statistical collections. The Advisory Council reviews the annual advisory prospective loss cost filing by the National Council on Compensation Insurance (NCCI) and provides comment and recommendation concerning the filing to the Commissioner of the Department of Commerce and Insurance. At the request of the General Assembly, the Advisory Council annually reviews and provides comments and recommendations on proposed workers' compensation legislation.

The Advisory Council on Workers' Compensation was initially created by the General Assembly in 1992. The Workers' Compensation Reform Act of 1996 terminated the existing Advisory Council and created a new Advisory Council on Workers' Compensation. The current Advisory Council is comprised of the State Treasurer who serves as Chair; three (3) voting members who represent employers; three (3) voting members who represent employees; ten (10) nonvoting members; and four (4) ex officio members. The Chair may vote only on matters related to the administration of the Advisory Council or the Council's research; the Chair is not permitted to vote on any matter that constitutes a policy recommendation to the Governor or to the General Assembly.

In addition, the Advisory Council may:

- Monitor the performance of the workers' compensation system in the implementation of legislative directives.
- Develop evaluations, statistical reports, and other information from which the General Assembly may evaluate the impact of the legislative changes to workers' compensation law.

- Issue an annual report that includes a summary of significant Supreme Court decisions relating to workers’ compensation.
- Make recommendations for safe employment education and training regarding the development of employer-sponsored health and safety programs by the DLWFD and the BWC.

Pursuant to T.C.A. § 50-60-121(g), the Advisory Council is attached to the Department of Treasury for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit, and other related items. The State Treasurer has administrative and supervisory control over the staff assigned to assist the Advisory Council. An assigned staff member acts as Administrator for the Advisory Council and is responsible for coordinating and facilitating the meetings and functions of the program

**2. Provide a list of current members of the Advisory Council and explain how membership complies with Section 50-6-121, Tennessee Code Annotated. Please provide information about voting versus non-voting members, terms of appointment, and the appointing authority for each member.**

<b>Voting Members</b>	<b>Term of Appointment</b>	<b>Appointing Authority</b>
David H. Lillard, Jr., Chair		Statute
Bob Pitts, Employers	July 1, 2018- June 30, 2022	Governor
Brian Hunt, Employers	Oct. 26, 2016 - June 30, 2020	Senate Speaker
Kerry Dove, Employers	July 1, 2016 - June 30, 2020	House Speaker
Bruce D. Fox, Employees	July 1, 2020 - June 30, 2024	Governor
Dail R. Cantrell, Employees	July 25, 2019 - June 30, 2022	Senate Speaker
Paul Shaffer, Employees	July 1, 2018 - June 30, 2022	House Speaker

<b>Non-Voting Members</b>	<b>Term of Appointment</b>	<b>Appointing Authority</b>
Joy Baker, Local Government	July 1, 2017 - June 30, 2021	Governor
Misty Williams, Insurance Companies	Aug. 2019 - June 30, 2022	Governor
Samuel E. Murrell III, M. D., TN Medical Association	July 1, 2017 - June 30, 2021	Governor
Terry Horn, TN Hospital Association	Sept. 2019 - June 30, 2022	Governor
Keith B. Graves, D. C., TN Chiropractor	July 1, 2017 - June 30, 2021	Governor
John Harris, TN Physical Therapist	July 1, 2017 - June 30, 2021	Governor
Sandra Fletchall, TN Occupational Therapist	July 1, 2017- June 30, 2021	Governor
Gregory Ramos, Attorney	July 1, 2017 - June 30, 2021	Governor
Lynn Vo Lawyer, Defense Attorney	July 1, 2019 - June 30, 2022	Governor
Jason Denton, Employee Attorney	July 1, 2019 - June 30, 2022	Governor
Sen. Paul Bailey, Chair, Senate Commerce and Labor		Ex-Officio
Rep. Clark Boyd, Chair, House Consumer and Human Resources		Ex-Officio
Abbie Hudgens, Administrator, Bureau of Work. Comp.		Ex-Officio
Troy Haley, Designee, Attorney/Legislative Liaison		
Commissioner Hodgen Mainda, Commerce and Insurance		Ex-Officio
Mike Shinnick, Designee, Workers' Compensation Manager		

The above membership complies with T.C.A. § 50-6-121. Until their replacement or reappointment, voting members Brian Hunt and Kerry Dove may continue to participate.

**3. Are there any vacancies on the Advisory Council? If so, please indicate how long the position has been vacant and explain steps that have been taken to fill any vacancies.**

As indicated the terms of two voting members, Brian Hunt, and Kerry Dove, ended June 30, 2020. Staff contacted and continued communication with the respective appointing authorities relative to replacing or reappointing the two voting members since the recent legislative session.

**4. How many times did the Advisory Council meet in Fiscal Year 2020?**

The Advisory Council met three (3) times in FY2020.

<b>Fiscal Year 2020</b>	<b>Meeting Date</b>	<b>Members Present</b>		
		<b>Voting</b>	<b>Non-Voting</b>	<b>Total</b>
(7/1/2019 – 6/30/2020)	Aug. 27, 2019	4	6	10
	Oct. 10, 2019	4	7	11
	Feb. 27, 2020	5	5	10

**5. What per diem or travel reimbursement do council members receive? How much was paid to council members during Fiscal Year 2020?**

Members of the Advisory Council serve without compensation but receive reimbursement for travel expenses in accordance with the travel regulations promulgated by the Department of Finance and Administration.

For Fiscal Year 2020, the Department of Treasury paid \$378.14 for travel expenses for Advisory Council members.

**6. What were the Advisory Council’s revenues and expenditures for Fiscal Year 2020? Does the Council carry a reserve balance? If yes, please provide additional relevant information regarding the fund balance.**

The Advisory Council does not carry a reserve balance and derives its funding from an annual State Appropriation. If expenditures exceed the appropriation, the Department of Treasury’s budget would be the source of further revenue.

<b>Fiscal Year 2020</b>	<b>Amount</b>
<b>State Appropriation</b>	\$221,497.00
<b>Expenditures</b>	
Travel (Mileage of Council Members)	\$378.00
Communications	\$840.00
Third-party Professionals (Actuary and Statistical)	\$28,492.00
Rentals and Insurance	\$59.00
Unclassified (Professional Privilege Tax)	\$400.00
Training of State Employees	\$350.00
Professional Services Provided by other State Agencies	\$1,116.00
Indirect Costs	\$113,583.00
<b>Expenditures Total</b>	<b>\$145,218.00</b>
<b>Ending Balance</b>	<b>\$76,279.00</b>

**7. Is the Advisory Council subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the Council have for informing the public of meetings and making minutes available to the public? Does the Council allow for public comment at meetings? Is prior notice required for public comment to be heard?**

Yes. The Advisory Council is subject to Sunshine law requirements for public notice of meetings, prompt and full recording of minutes, and public access to minutes. Public notices are posted electronically on the State of Tennessee’s Public Participation Calendar and the Treasury Department’s website.

The Advisory Council provides copies of the public meeting notice together with the meeting agenda to interested individuals and entities. In addition, interested parties receive email notification of meeting dates, agendas, and items for consideration.

The Advisory Council usually meets in the Cordell Hull Building. The meetings are video-streamed on the General Assembly's website, which provides live public access as well as archiving for post-meeting review. Member information, agendas, minutes, presentations, and other relevant documents are posted on the Treasury Department's website. The Council allows for public comment at meetings. Prior notice is not required for public comment. **Note:** A meeting scheduled for August 28, 2020 will be virtual due to the pandemic.

**8. Please describe what policies and procedures the Advisory Council has in place to address potential conflict of interest by Advisory Council members, staff, and employees.**

Advisory Council members are encouraged and expected to disclose any potential or actual conflicts of interest that may arise regarding proposed legislation, proposed rules and regulations, actuarial reports, analyst reports, and presentations by lobbyists, attorneys, industry representatives, healthcare representatives, and other presenters.

**9. Has the Advisory Council promulgated rules and regulations? If yes, please cite the reference.**

The Advisory Council has not promulgated rules and regulations.

**10. What were the Advisory Council's major accomplishments during Fiscal Year 2020? Specifically describe the nature and extent of the Advisory Council's activities as they relate to the Council's advisory role as defined and authorized in Section 50-6-121(f), *Tennessee Code Annotated*.**

In Fiscal Year 2020, the Advisory Council made a recommendation to the Commissioner of the Department of Commerce and Insurance relative to the NCCI loss cost filing. The Advisory Council timely provided House and Senate committees with recommendations on six (6) bills dealing with workers' compensation issues. The Council produced written reports with respect to those bills to the Committee Chairs of the Senate Commerce and Labor Committee and the House Consumer and Human Resources Committee. The Council also provided an annual report of the significant Supreme Court decisions with respect to workers' compensation on January 15, 2020, and an annual report of its activities on July 1, 2020.

**11. How many bills were reviewed at the request of the standing committees of the General Assembly, as authorized at Section 50-6-121(k), *Tennessee Code Annotated*, during Fiscal Year 2020?**

The Advisory Council reviewed six (6) bills at the request of Standing Committees in Fiscal Year 2020. The Advisory Council produced written reports on the six (6) bills that advanced to final recommendation stage to the Committee Chairs of the Senate Commerce and Labor Committee and the House Consumer and Human Resources Committee.

**12. What reports does the Advisory Council prepare concerning its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any such reports issued in Fiscal Year 2020.**

Pursuant to T.C.A. §§ 50-6-121(e) and (l), the Advisory Council prepared an annual report of its activities on July 1, 2020. A copy of the FY 2020 annual report is attached as Exhibit #1. Attached as Exhibit #2 is a copy of the annual report of significant Supreme Court decisions relating to workers' compensation produced January 15, 2020, as required by T.C.A. §50-6-121(i).

Reports required by T.C.A. §50-6-121(j) include the Advisory Council's recommendations on the bills reviewed along with Advisory Council member comments during the meetings and are submitted to the Senate and House Committee Chairs and members as soon as possible following meetings. Exhibit #3 attached is the report of Advisory Council recommendations for FY2020. Brief summaries of bills the Advisory Council is asked to review are provided to the Advisory Council members before their meetings and include the status of the law as it presently exists, newly proposed language, the fiscal note (if available) and its potential effects.

Additional reports for use by the Advisory Council and the General Assembly are available through contracts with actuarial and statistical vendors. These include actuarial reviews of NCCI's annual experience filing, actuarial reviews of any NCCI law-only filings, attached as Exhibit #4; an annual analysis by the Council's statistician of data from the Bureau of Workers' Compensation, Exhibit #5; and an annual Overview of the Tennessee Workers' Compensation Market Conditions and Environment from the Tennessee Department of Commerce and Insurance, Exhibit #6. Advisory Council members and the Committee Chairs of the Senate Commerce and Labor Committee and the House Consumer and Human Resources Committee receive these reports. The reports are accessible on the Advisory Council's website.

The recommendations from the Advisory Council to the Commissioner of Commerce and Insurance with respect to the NCCI rate filings are in letter form to the Commissioner, attached as Exhibit #7, and are copied to the members of the Advisory Council and the interested parties' list. All of the referenced reports are located on the Treasury Department's website as well.

**13. Please describe any items related to the Advisory Council that require legislative attention and your proposed legislative changes.**

There are no items related to the Advisory Council that require legislative attention.

**14. Should the Advisory Council be continued? To what extent and in what ways would the absence of the Advisory Council affect the public health, safety, or welfare of the citizens of Tennessee?**

Yes. The Advisory Council on Workers' Compensation functions in an advisory capacity and serves many, including the Governor, the General Assembly, the Bureau of Workers' Compensation, and the Department of Commerce and Insurance. It supports the General Assembly by providing recommendations on workers' compensation issues and proposed legislation, including the impact on existing law and policy. Because the Advisory Council membership includes representatives from employers, employees, and the medical, legal, governmental, and insurance communities, the in-depth review and discussion of the merits of legislation from all viewpoints is very helpful.

Voting members of the Advisory Council are knowledgeable in the area of workers' compensation. One of the Advisory Council's key functions is to hear testimony from lobbyists, industry groups, and reports from other State Departments, such as the Department of Commerce and Insurance and the Bureau of Workers' Compensation. The Advisory Council also hears presentations by the National Council on Compensation Insurance (NCCI) relative to projected costs of administering workers' compensation claims for future years and from actuaries who have evaluated NCCI's methodology. The Advisory Council hears presentations by sponsors of proposed legislation and discusses each bill referred for consideration. The Advisory Council's legislation review is useful to members of the General Assembly who would otherwise be required to perform this process in Committees already overburdened with multiple issues to consider. The Advisory Council's reports constitute a valuable resource to members of the General Assembly for workers' compensation issues. The non-voting members each represent stakeholders in the workers' compensation process, and are aware of the impact of potential changes in the law upon their respective fields.

**15. Please identify the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.**

**Alison Cleaves**, Assistant Treasurer - Legal, Compliance and Audit

**Larry Scroggs**, Senior Treasury Counsel - Administrator, Advisory Council

**16. Please provide the office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing.**

**Alison Cleaves**

Andrew Jackson Bldg. 13<sup>th</sup> Floor

502 Deaderick St., Nashville, TN 37243

(615) 253-6150

[alison.cleaves@tn.gov](mailto:alison.cleaves@tn.gov)

**Larry Scroggs**

Andrew Jackson Bldg. 13<sup>th</sup> Floor

502 Deaderick St., Nashville, TN 37243

(615) 289-4603

[larry.scroggs@tn.gov](mailto:larry.scroggs@tn.gov)



AUGUST 2020

ADVISORY COUNCIL ANNUAL REPORT  
FOR FY2020

EXHIBIT 1

LARRY SCROGGS  
STATE OF TENNESSEE, TREASURY DEPARTMENT



# Tennessee Advisory Council On Workers' Compensation

<https://treasury.tn.gov/Explore-Your-TN-Treasury/About-the-Treasury/Boards-and-Commissions/Advisory-Council-on-Workers-Compensation>

---

Annual Report for  
July 1, 2019 - June 30, 2020

---

State of Tennessee  
Treasury Department  
State Capitol  
Nashville, Tennessee 37243-0225

*David H. Lillard, Jr., State Treasurer, Chair*

*Larry Scroggs, Administrator*

**STATE OF TENNESSEE**  
**ADVISORY COUNCIL ON WORKERS' COMPENSATION**  
**ANNUAL REPORT**  
**JULY 1, 2019 - JUNE 30, 2020**

Pursuant to *Tennessee Code Annotated*, Section 50-6-12l (e), the Advisory Council on Workers' Compensation hereby submits its annual report for July 1, 2019 through June 30, 2020, including statistical reports and Tennessee workers' compensation data.

**TABLE OF CONTENTS**

Statutory Duties and Responsibilities of the Advisory Council .....	1
Advisory Council Members and Terms .....	2
Activities of the Advisory Council .....	5
Summary of Meetings .....	5
August 27, 2019 .....	5
October 10, 2019 .....	7
February 27, 2020 .....	8
Case Law Update	
Estate of Clarence Turnage, et al. v. Dole Refrigerating Co., Inc. ....	11
Floyd McCall v. Ferrell Paving, et al. ....	12
Kevin W. Taylor v. G.UB.MK Constructors .....	13
Charles R. Goodwin v. Morristown Driver's Services, Inc. ....	15
TOSHA News .....	16
Conclusion .....	16

## **STATUTORY DUTIES AND RESPONSIBILITIES OF THE TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION**

The Tennessee General Assembly established the Advisory Council on Workers' Compensation (the "Advisory Council" or "Council") in 1992. The Workers' Compensation Reform Act of 1996 terminated the then existing Council and created a new Advisory Council on Workers' Compensation. Subsequent amendments, including those in the Reform Acts of 2004 and 2013 (Chapter Numbers 282 and 289 of the Public Acts of 2013), are recorded at *Tennessee Code Annotated* ("T.C.A."), Section 50-6-121, which outlines the authority of the Council, its specific responsibilities, and its general duties. The General Assembly transferred administration of the Council from the Tennessee Department of Labor and Workforce Development to the Tennessee Department of Treasury pursuant to Chapter Number 1087 of the Public Acts of 2010, and extended the Council to June 30, 2016 pursuant to Chapter Number 622 of the Public Acts of 2012. Chapter Number 608 of the Public Acts of 2016 extended the Council's existence to June 30, 2020. Chapter Number 637 of the Public Acts of 2020 extended the Council's existence to June 30, 2021. T. C. A. § 50-6-121 (f)-(l) authorizes the Council to:

- Make recommendations to the Governor, the General Assembly, the Senate Commerce and Labor Committee, the House Consumer and Human Resources Committee, the Administrator of the Bureau of Workers' Compensation, and the Commissioner of Commerce and Insurance relating to the promulgation or adoption of legislation or rules;
- Make recommendations to the Administrator of the Bureau of Workers' Compensation and the Commissioner of Commerce and Insurance regarding the method and form of statistical data collection; and
- Monitor the performance of the workers' compensation system in the implementation of legislative directives and develop evaluations, statistical reports and other information from which the General Assembly may evaluate the impact of legislative changes to workers' compensation law.

Further responsibilities of the Advisory Council are included in T.C.A., Titles 50 and 56. These provisions, among other things, direct the Council to provide the Commissioner of Commerce and Insurance with a recommendation regarding advisory prospective loss cost filings made by the National Council on Compensation Insurance, Inc. ("NCCI"), the authorized Tennessee rating bureau.

## ADVISORY COUNCIL MEMBERS AND TERMS

The current Advisory Council is composed of seven voting members, ten non-voting members and four ex-officio members. The State Treasurer is the statutory chair and a voting member for administrative purposes. Three voting members represent employers and three voting members represent employees. The non-voting members represent local government, insurance companies, medical organizations, hospital organizations, chiropractors, physical and occupational therapists, and attorneys, all in Tennessee. The chair may vote only on matters related to the administration of the Council or its research; the chair may not vote on any matter that constitutes the making of a policy recommendation to the Governor or to the General Assembly.

Appointments to the Council are made by the Governor, Speaker of the Senate, and Speaker of the House pursuant to T.C.A. § 50-6-121 (a)(l)(C). They each appoint one voting member representing employers and one voting member representing employees. The Governor appoints the additional ten non-voting Council members. The Governor may choose to appoint from lists of suggested nominees provided by interested organizations as outlined in T.C.A. § 50-6-121(a)(l)(E)(i-ii).

On July 25, 2019, Lieutenant Governor Randy McNally appointed **Dail R. Cantrell** of Clinton, Tennessee as a voting member representing employees. His term will expire June 30, 2022. Mr. Cantrell succeeded John M. Garrett who completed his term on June 30, 2019. In August 2019, Governor Bill Lee appointed **Misty D. Williams** of Brentwood, Tennessee as a non-voting member, to succeed Jerry Mayo as a representative of insurance companies. In October 2019, Governor Lee appointed **Teresa (Terry) Horn** of Hermitage, Tennessee as a non-voting member to succeed Pam Smith as a representative of hospital organizations. Governor Lee also reappointed non-voting members **Jason Denton** (representing justice organizations as an attorney for employees) and **Lynn Lawyer** (representing defense lawyer organizations). The terms of Ms. Williams, Ms. Horn, Mr. Denton, and Ms. Lawyer will expire June 30, 2022.

The current terms of voting members Kerry Dove, Bruce Fox, and Brian Hunt expire June 30, 2020. Governor Lee is the appointing authority for Mr. Fox's position. Lieutenant Governor McNally is the appointing authority for Mr. Hunt's position and House Speaker Cameron Sexton is the appointing authority for Mr. Dove's position.

A chart outlining the members of the Advisory Council on Workers' Compensation as of June 30, 2020 is on the following page:

## MEMBERS OF THE ADVISORY COUNCIL

NAME	MEMBER TYPE	REPRESENTING
David H. Lillard, Jr. State Treasurer	Chairman Administrative Voting Member	State Treasurer Statutory Member
Dail Cantrell	Voting Member	Employees
Kerry Dove	Voting Member	Employers
Bruce D. Fox	Voting Member	Employees
Brian Hunt	Voting Member	Employers
Bob Pitts	Voting Member	Employers
Paul Shaffer	Voting Member	Employees
Joy Baker	Non-Voting	Local Governments
Misty D. Williams	Non-Voting	Insurance Companies
Samuel E. Murrell, III, M.D.	Non-Voting Member	Health Care Providers: TN Medical Association
Terry Horn	Non-Voting Member	Health Care Providers: TN Hospital Association
Keith B. Graves, D.C.	Non-Voting Member	Health Care Providers: Licensed TN Chiropractor
John Harris	Non-Voting Member	Health Care Providers: Licensed TN Physical Therapist
Sandra Fletchall	Non-Voting Member	Health Care Providers: Licensed TN Occupation Therapist
Jason Denton	Non-Voting Member	Attorney: TN Association for Justice
Lynn Vo Lawyer	Non-Voting Member	Attorney: TN Defense Lawyers
A. Gregory Ramos	Non-Voting Member	Attorney: TN Bar Association
Senator Paul Bailey, Chairman	Ex-Officio Non-Voting	Senate Commerce and Labor Committee
Representative Clark Boyd, Chairman	Ex-Officio Non-Voting	House Consumer and Human Resources Committee
Abbie Hudgens, Administrator Troy Haley, Designee	Ex-Officio Non-Voting	TN Bureau of Workers' Compensation
Commissioner Hodgen Mainda Designee, Mike R. Shinnick	Ex-Officio Non-Voting	TN Department of Commerce and Insurance

## TERMS OF THE NON-EX-OFFICIO MEMBERS

Voting	Term of Position
Dail Cantrell	July 25, 2019 - June 30, 2022
Kerry Dove	July 1, 2016 - June 30, 2020
Bruce D. Fox	July 1, 2016 - June 30, 2020
Bob Pitts	July 1, 2018 - June 30, 2022
Brian Hunt	October 26, 2016 - June 30, 2020
Paul Shaffer	July 1, 2018 - June 30, 2022
Non-Voting	Term of Position
Joy Baker	July 1, 2017 - June 30, 2021
Terry Horn	September 2019 - June 30, 2022
Sandra Fletchall	July 1, 2017 - June 30, 2021
Keith B. Graves	July 1, 2017 - June 30, 2021
John Harris	July 1, 2017 - June 30, 2021
Lynn Vo Lawyer	July 1, 2019 - June 30, 2022
Misty Williams	August 2019 - June 30, 2022
Samuel E. Murrell, III, M.D.	July 1, 2017 - June 30, 2021
A. Gregory Ramos	July 1, 2017 - June 30, 2021
Jason Denton	July 1, 2019 - June 30, 2022

## ACTIVITIES OF THE ADVISORY COUNCIL

By statute, the Advisory Council must meet at least two times per year. During the July 1, 2019 through June 30, 2020 fiscal year, the Advisory Council met on three occasions. The Council convened on August 27, 2019, October 10, 2019, and February 27, 2020. Approved meeting minutes are available at the Advisory Council's website <https://treasury.tn.gov/Explore-Your-TN-Treasury/About-the-Treasury/Boards-and-Commissions/Advisory-Council-on-Workers-Compensation> under the "Meetings" tab. The agenda and video of each meeting are also available at the same location.

### Summary of Meetings

The three Advisory Council meetings between July 1, 2019 and June 30, 2020 were devoted to receiving reports from consultants, reviewing proposed legislation, and procuring information from documentation and presentations. The primary sources of pertinent information were citizens, legislators, other state officials, and representatives of business and professional entities essential to the fair, efficient, and effective administration of Tennessee's workers' compensation system. Meeting summaries describe the Advisory Council's activity.

#### Meeting on August 27, 2019

**Chairman David Lillard** called the meeting to order at 1:35 p.m. (CDT) and welcomed Council members and those in attendance. He noted that voting member **Bob Pitts** was then en route, and that a quorum of voting members would exist upon his arrival. A physical quorum requires the presence of three voting members in addition to the Chairman. The Chairman explained that the meeting today would be informational until Mr. Pitts' arrival. The Chairman noted that the National Council on Compensation Insurance (NCCI) today had filed its prospective *loss costs and rating values* for the Voluntary Workers' Compensation insurance market, and *rates and rating values* for the Assigned Risk market, to become effective March 1, 2020. Advisory Council members have received copies of the filing for review in preparation for the next meeting of the Council.

**The Chairman** explained that today's agenda items, which consist of reports and overviews of workers' compensation market conditions and the filing by NCCI are pertinent to the Council's responsibility to make suitable recommendations to the Commissioner of Commerce and Insurance at the next meeting. The Chairman invited questions and comments from those attending the meeting as each presentation proceeded.

**Council ex officio member Mike Shinnick**, Workers' Compensation Manager of the Department of Commerce and Insurance ("DCI"), presented *An Overview of Tennessee Workers' Compensation Market Conditions and Environment*. Mr. Shinnick said preliminary data confirmed that national property and casualty underwriting results for private carriers were continuing to trend favorably and since 2008, workers' compensation insurers reflected similar results. Other significant points by Mr. Shinnick: the average indemnity claim severity over a two-year period is stable at a 3.7% increase; claim frequency is continuing to decline; and pretax operating gain for carriers is reflecting the best results over a 20-year period, at 26%. In the Tennessee voluntary workers' compensation market, premiums for 2018 totaled \$757,789.88. Mr. Shinnick also cited the recent stable history of the Tennessee assigned risk or residual workers' compensation insurance market. There were no insolvencies among assigned risk carriers in 2018. He noted *Bright Horizons*, an assigned risk depopulation initiative, was helping reduce premium cost in the assigned risk market in Tennessee.

**Mr. Pitts** arrived at 2 p.m., permitting a physical quorum, with voting members **Kerry Dove**, **Brian Hunt**, and **Mr. Pitts**. **Bruce Fox** participated by telephone. The Chairman returned to the first agenda item, which was to approve the minutes of the previous Advisory Council meeting on March 18, 2019. A motion to approve the minutes by **Mr. Pitts**, seconded by **Mr. Hunt**, passed unanimously.

**The Chairman** addressed the second agenda item under New Business, recognizing **Hannah Wohltjen** and **Jessica Benton** of *Elevate Consulting, LLC*, as the new statistical data analysts for the Advisory Council. They presented a *Statistical Analysis of 2018 Workers' Compensation Data*, based on data compiled by the Bureau of Workers' Compensation, Tennessee Department of Labor and Workforce Development. Their report addressed six key questions: Who is receiving workers' compensation? What types of benefits are individuals receiving? Are individual recipients returning to work? What are trends in conclusion types? Are cases progressing in a timely manner? How much compensation are injured workers receiving?

Their conclusions were generally that: the median age of employee-claimants with permanent injury claims concluded from 2009 to 2018 is 47. Sixty-two percent (62%) had a high school diploma or equivalent. Thirty-six percent (36%) of the injuries occurred in Middle Tennessee. Medical expenses and permanent partial disability (PPD) were the most common types of benefits from 2009-2018. The majority of those receiving workers' compensation benefits returned to work. The vast majority of cases conclude by settlement. The median number of weeks from injury to conclusion was 68. The median total compensation amount for pre-Workers' Compensation Reform Act of 2013 claims exceeded that of post-Act claims, and the median number of weeks for receiving benefits for pre-Act claims exceeded that of post-Act claims. Claimants who received the highest median compensation were between 45-59 years old, with less than a high school education, who reside in Middle Tennessee.

Council members **Jason Denton**, **Gregg Ramos**, **Bob Pitts**, **Brian Hunt**, and **Kerry Dove** asked questions about the method of data collection, population factors and demographic changes. In response to Council member Denton's specific question about SD1 and SD2 forms, Ms. Benton responded that SD1 forms generally apply to pre-Act claims, but some post-Act claims were included on SD1 forms before the SD2 forms came into regular use for such claims. This suggests that another full year of data collection would provide a clearer picture of pre and post-Act data, according to Ms. Benton.

**The Chairman** then addressed the third agenda item, a presentation by **Eddie Herrera**, Director of Plan Administration for the National Council of Compensation Insurance ("NCCI"). Mr. Herrera presented the *Workers' Compensation Plan Report*. He focused on the residual or assigned risk market. Some 12,659 policies issued in 2018, with a premium volume of \$65,742,426. The average workers' compensation insurance premium is \$3,830. Sixty-seven percent (67%) of the policies have an average premium of \$1,059. Policies written for construction of residential dwellings not exceeding three stories occupy the top rank at 13.8%. Tennessee has three servicing carriers and seven direct assignment carriers in the residential market. Note: The residential market written premiums of \$65.7 million for 2018 represent a market share of 8%. **Mr. Pitts** asked Mr. Herrera if Tennessee's premium level, exceeded only by Georgia, Illinois and Virginia, was a problem. Mr. Herrera noted Mr. Shinnick's presentation indicated premiums were decreasing in Tennessee so he was not sure there was a problem. **Mr. Shinnick** responded that a possible factor that may increase Tennessee's premium amount is that temporary help firms make up 50% of the residual market and that a high level of construction activity in the state may also be a contributing factor.

**The Chairman** addressed the fourth item under New Business, which was an overview of the *Tennessee*

*Workers' Compensation Voluntary Loss Cost Filing*, proposed to be effective March 1, 2020. The presentation was by **Dan Cunningham**, Director and Actuary for NCCI. Mr. Cunningham explained that NCCI's loss cost projection filed today indicated an overall voluntary market loss cost level of -9.5%, compared to the NCCI filing of -19% that became effective March 1, 2019. The March 1, 2020 projection results from an analysis of experience and development, trend, benefits and loss-based expense for policy years 2016 and 2017. Policy year data consists of the premium and losses derived from all policies written in a given year. Mr. Cunningham said the use of the two policy years accurately reflects premium volume and is responsive to recent trends. In response to a question by Council member Ramos, Mr. Cunningham confirmed there has been a steady decline in indemnity and medical loss ratios since 2010. A similar trend is evident in claim frequency, although the decrease for the last year reviewed was not as low as some years. Mr. Cunningham said he had noted a slight increase in claim severity that may not hold. Mr. Cunningham explained that an Assigned Risk Rate Filing has not yet occurred but he anticipates a slight increase in the loss cost multiplier (LCM) proposed to be effective March 1, 2020. The assigned risk LCM that became effective March 1, 2019 was 1.707.

**The Chairman** thanked each presenter and invited the Council members to review all presentations and documents in preparation for making a formal recommendation to the Commissioner of the Department of Commerce & Insurance relative to the Voluntary Loss Cost Filing at the next scheduled meeting of the Advisory Council on October 10, 2019. The meeting adjourned at 3:25 p.m.

### **Meeting on October 10, 2019**

**The Chairman, David Lillard**, convened the meeting at 1:35 p.m. (CDT) and welcomed the members and those in attendance. A quorum of voting members was established. (Thereafter, Council member **Bob Pitts** arrived at 1:45 p.m.). **The Chairman** noted that at the previous meeting on August 27, 2019, representatives of the National Council on Compensation Insurance (NCCI) presented a brief overview of the Voluntary Loss Cost and Assigned Risk Rate Filing proposed to be effective March 1, 2020. Documentation relative to the filing was available to members present at the August 27, 2019 meeting and was distributed to members subsequent to the meeting.

**The Chairman** addressed the first item on the agenda, which was to approve the minutes of the Council's August 27, 2019 meeting. On motion by Council member **Brian Hunt**, seconded by Council member **Bruce Fox**, the minutes were approved on a unanimous voice vote.

**The Chairman** addressed the next item under New Business, recognizing **Dan Cunningham**, Director and Actuary for the *National Council on Compensation Insurance* (NCCI), Actuarial and Economic Services. Mr. Cunningham first presented an analysis of the effect of recent workers' compensation medical fee schedule changes by the *Bureau of Workers' Compensation* that became effective September 10, 2019. The changes had not been addressed in NCCI's **Tennessee Workers' Compensation Voluntary Loss Cost Filing** of August 27, 2019. Subsequently, on October 3, 2019, NCCI provided the Council with an impact statement relative to the medical fee schedule changes. Mr. Cunningham indicated the medical fee schedule changes necessitated a modification of NCCI's loss cost projection by **+1.5%**, resulting in a revised loss cost filing of **-8.2%**, down from **-9.5%**, proposed to be effective March 1, 2020. During his comments, Mr. Cunningham indicated policy years 2016 and 2017 better measure the current Tennessee market conditions, and that a longer evaluation period could be considered whenever there is volatility in the period utilized.

**The Chairman** addressed the next agenda item under New Business, and called upon **Mary Jean King**, representing the Advisory Council's actuary, *By the Numbers Actuarial Consulting, Inc.* ("BYNAC"). Ms.

King presented an actuarial review of the Tennessee Voluntary Loss Cost Filing by the National Council on Compensation Insurance (“NCCI”). Ms. King indicated NCCI’s original proposed decrease of -9.5% for the Tennessee voluntary workers’ compensation insurance market had been reasonably calculated in accordance with actuarial standards of practice, considering the two-year period relied upon by NCCI in its projected decrease. Ms. King stated the proposed change by NCCI of +1.5% due to the revised medical fee schedules was also reasonably calculated in accordance with actuarial standards of practice. Ms. King stated that BYNAC reviewed paid as well as paid+ case development and experience for policy years 2014 and 2015 in addition to the 2016 and 2017 policy years underlying the filing in order to test the assumptions of NCCI in selecting the data and development methods for its review. Ms. King said she preferred a longer experience period of four years. Using years 2014-2017, BYNAC’s experience indication for the voluntary market loss cost level is -5.4%, compared to NCCI’s -9.5% before factoring in the impact of the medical fee schedule changes. Ms. King stated the medical fee schedule changes resulted in a revision of BYNAC’s experience indication to -4.0%. In response to questions by Council member Pitts, Ms. King said the difference between the NCCI and BYNAC projections was due to trend selection. She agreed the trend currently indicates lower claims frequency and lower costs but that a longer evaluation period would provide a better measure.

**The Chairman** then addressed the next agenda item under New Business, recognizing **Chris Burkhalter**, the actuary for the *Department of Commerce and Insurance* (“DC&I”). Mr. Burkhalter, representing *The Burkhalter Group* (“TBG”), also presented an analysis of the NCCI voluntary market loss cost filing. Mr. Burkhalter noted that TBG also used a longer experience period of five years in arriving at its own overall indication of an -5.3% loss cost decrease. However he said TBG agreed that NCCI’s original projected decrease of -9.5% is actuarially sound based on the anticipated market conditions, considering NCCI used only policy years 2016 and 2017 in its evaluation. After factoring in the medical fee schedule changes, Mr. Burkhalter indicated TBG had revised its projection to -3.9%. Mr. Burkhalter also noted an increase in medical severity of claims in the last two years as one reason he considered a longer evaluation period appropriate. Council member **Misty Williams** asked Ms. King and Mr. Burkhalter how the projections compared with the previous year. They responded that the projections for the March 1, 2019 filing were NCCI -19.0%, TBG -10.2% and BYNAC -9.1%.

**The Chairman** thanked the presenters and opened the floor for further discussion of the presentations by Council members. **The Chairman** also invited public comment from those in attendance.

Following further discussion, Council member **Pitts** moved that the Advisory Council formally notify DC&I Commissioner **Hodgen Mainda** that the Council recommended a loss cost decrease factor of **-4.0%** in line with the recommendations of the actuaries for the Council and the Department of Commerce and Insurance, rather than the NCCI recommendation of -8.2%. Council member **Bruce Fox** seconded the motion. The voting members in attendance **voted unanimously to adopt the motion.** (Note: a letter dated October 24, 2019 to Commissioner Mainda from the Chairman reflected the Advisory Council’s recommendation.)

The meeting adjourned at 3:05 p.m.

### **Meeting on February 27, 2020**

Upon convening the meeting at 1 p.m., and upon establishing a quorum, **Chairman David Lillard** noted the primary purpose was for the Advisory Council to fulfill its statutory duty to consider and make recommendations on proposed legislation introduced in the Second Session of the 111<sup>th</sup> General Assembly affecting the workers’ compensation system. The **Chairman** indicated six bills had been referred to the Council by **Representative Clark Boyd**, Chairman of the House Consumer and Human

Resources Committee, and that the Council's recommendations would be reported to both the House Consumer and Human Resources Committee and the Senate Commerce and Labor Committee accordance with T.C.A. § 50-6-121(k). **The Chairman** explained his role as chairman of the Advisory Council is primarily administrative in nature, pursuant to T. C. A. § 50-6-121 (a)(1)(B), and that he is not permitted to vote on any matter that constitutes the making of a policy recommendation to the Governor or the General Assembly. Accordingly, for purposes of today's meeting, only the voting members participating (**Kerry Dove, Bruce Fox, Brian Hunt, Bob Pitts and Paul Shaffer**) may vote on such matters.

**The Chairman** addressed the first item on the agenda, which was to approve the minutes of the Council's meeting on October 10, 2019. Upon motion by Council member **Fox**, seconded by Council member **Dove**, the minutes were approved on unanimous voice vote.

**The Chairman** addressed the next item under New Business, which was consideration of six legislative proposals affecting the workers' compensation system.

**The Chairman** first addressed **HB2101/SB2761 (Russell – Bell)**, and recognized the House sponsor, **Rep. Lowell Russell** for the presentation. **Rep. Russell** explained that the bill would allow physicians' assistants and registered nurses to be included on panels from which injured employees choose to receive treatment for injuries in workers' compensation cases. It would amend T. C. A. Title 50, Chapter 6. **Rep. Russell** cited lower physician coverage in rural areas and a desire to make the workers' compensation system more effective and efficient as the rationale for the bill. *Physicians' Assistant Academy* and *Advanced Practice Registered Nurses* representatives also spoke in favor of the legislation. Advisory Council members **Terry Horn** and **Gregg Ramos** expressed concerns whether there would be sufficient physician oversight of PAs and RNs if they were included as panel members.

BWC Administrator and *Ex Officio* Council member **Abbie Hudgens** observed if a panel consisted only of PAs and RNs there would be challenges to the presumption of correctness afforded authorized treating physicians and protracted litigation relative to causation opinions and impairment ratings. Council member Dr. Sam Murrell emphasized the different levels of education and training required for physicians in contrast to PAs and RNs. Dr. Murrell stated PAs and RNs render invaluable services but they require direct physician oversight to be most effective. He said adding PAs and RNs to panels would essentially change the definition of healthcare provider. He also cited the likelihood of increased litigation relative to opinions on causation and impairment.

**Rep. Clark Boyd**, an *Ex Officio* Council member, asked if any data is available from other states about the scope of practice of PAs and RNs serving on panels. **The Chairman** asked if any other persons in attendance wished to address the Advisory Council on the bill. **Yarnell Beatty**, Vice-President of the *Tennessee Medical Association*, expressed significant concerns about the proposed legislation, including the absence of any mention of the role of a collaborating physician.

Upon further discussion, Council member **Fox**, seconded by Council member **Dove**, moved that the Advisory Council provide an **unfavorable recommendation** on the proposed bill. The motion was adopted **5-0**.

**The Chairman** next recognized **House Majority Leader William Lamberth**, House sponsor of **HB2256/SB2189 (Lamberth – Johnson)**. The proposed legislation, in part, requires workers' compensation coverage for construction services performed in Tennessee, excludes such providers from certain provisions of the workers' compensation law, and imposes liability on a successor in interest of a penalized provider. An amendment (drafting code **015003**) defines "successor in interest" of a penalized

construction services provider and confirms the successor's liability for a penalty assessed against a former provider. After discussion, Council member **Pitts**, seconded by Council member **Paul Shaffer**, moved that the Advisory Council provide a **favorable recommendation for passage**. The motion was adopted **5-0**.

**The Chairman** then recognized **Majority Leader Lamberth**, House sponsor on **HB2257/SB2190 (Lamberth – Johnson)**. With a trailing amendment, the proposed legislation would revise the time for filing for increased benefits and lengthen the time following an injury an employee has to provide notice of the injury to the BWC and of the failure of an employer to secure payment of compensation. The sponsor indicated that in view of the amendment in process, sections 1 and 4 of the original bill as introduced were to be stricken. Upon discussion, it was determined that the sponsor was interested in working with stakeholders on portions of the proposed bill and that a study group would be appropriate. Council member **Pitts**, seconded by Council member **Fox**, moved that the Advisory Council provide a **favorable recommendation for passage**, with the exception of original sections 1 and 4, and with the understanding that a study group would be forming to complete the legislation. The motion was adopted **5-0**.

**The Chairman** next recognized **Rep. Dwayne Thompson**, House sponsor of **HB2628/SB2404 (Thompson – Kyle)**. The proposed bill revises penalties for noncompliance with workers' compensation insurance coverage and deals with the problem of employee misclassification. The sponsor explained that he and the Senate sponsor do not plan to move the bill forward in the current session. Rather, they desire discussions with stakeholders and request a working group to study the noncompliance issues. During discussion, a recommendation emerged that the BWC provide the necessary supervision and organizational structure for a study group to recommend appropriate legislation in the next session of the General Assembly. Administrator **Hudgens** stated the BWC would be willing to assist in the effort. Council member **Pitts**, seconded by Council member **Fox**, moved that the Advisory Council provide a **favorable recommendation for study** by an appropriate group of stakeholders, assisted by the BWC, for completion in time for consideration by the legislature in the next session. The motion was adopted **5-0**.

**The Chairman** next recognized **Rep. John Ragan**, House sponsor of **HB2577/SB2691 (Ragan – Briggs)**. **Rep. Ragan** presented the bill, which creates a presumption that a public safety employee diagnosed with PTSD sustained the injury in the line of duty for purposes of workers' compensation. It also expands the definition of public safety employee. It amends T. C. A. Titles 7, 8, 33, 50 - Chapter 6 and Title 56. The sponsor noted that public safety employees experience multiple trauma situations, that suicide is prevalent among them, and that brain scans show PTSD is a true brain injury. Council member **Joy Baker** commended the work of public safety employees but said those injured at work already have access to workers' compensation benefits. She stated the legislation, if enacted, would be an unfunded mandate and would place a heavy burden on local governments. Council member **Pitts** said the Advisory Council had never recommended passage of presumptive injury legislation. He said he was concerned that such legislation would open the door for other presumptive injury bills. After further discussion, Council member **Fox** moved, seconded by Council member **Shaffer**, that the Advisory Council provide the bill with a favorable recommendation for passage. The motion failed on a 2-3 vote. Following the vote, Council member **Fox** inquired if an amendment to make the presumption rebuttable might make the legislation palatable. Council member **Pitts** reiterated his concern that expanding presumptive injuries would be detrimental to the workers' compensation system. **The Chairman** observed that in view of the motion posture and outcome the proposed legislation would necessarily move from the Advisory Council with **no recommendation**.

**The Chairman** recognized **Rep. Clark Boyd**, House sponsor of **HB2154/SB2861**. With an amendment (drafting code **015575**), the proposed bill would limit attorney fees in certain instances where legal action on behalf of an injured employee is required to pursue wrongfully denied or withheld workers' compensation benefits. The amendment would require the trial court to make specific findings to support an award of attorney fees. Council member **Ramos** commented that limiting fee awards was against the interest of employees facing protracted litigation to enforce prior court orders that granted them future medical treatment benefits. He said most attorneys who previously handled workers' compensation cases were no longer doing so because there was no incentive for an attorney to be an advocate because of limitations on benefit awards and fees under the *Workers' Compensation Reform Act of 2013*. The sponsor responded that one purpose of the bill was to put guardrails in place for outlier cases in which excessively large attorney fees were possible; and secondly that the legislative intent is to extend the fee structure for wrongfully denied benefit claims for another two years. After further discussion, Council member **Pitts** moved, seconded by Council member **Fox**, that the Advisory Council provide a **favorable recommendation for passage**. The motion was adopted **5-0**.

The meeting adjourned at 2:40 p.m. [Note: The action by the Advisory Council on the proposed legislation considered on February 27, 2020, was reported to **Chairman Clark Boyd** of the *House Committee on Consumer and Human Resources* and **Chairman Paul Bailey** of the *Senate Committee on Commerce and Labor* and the members of their respective committees on March 6, 2020.]

## TENNESSEE CASE LAW UPDATE

Throughout the year, the Advisory Council followed the Tennessee Supreme Court, reviewing its decisions and suggestions regarding the need for specific changes in the workers' compensation law.

The Advisory Council submitted an annual case law update for the 2019 calendar year to the General Assembly in January 2020 that included all workers' compensation opinions from the Tennessee Supreme Court.

The Supreme Court's *Special Workers' Compensation Appeals Panels* ("Special Panel" or "Panel"), which each include one Justice and two other assigned judges, hear virtually all appeals of trial court decisions in workers' compensation cases. The Special Panel gives considerable deference to a trial court's decision regarding witness credibility since the lower court has the opportunity to observe testimony. The Panel reports its findings of fact and conclusions of law and its judgments automatically become the judgment of the full Tennessee Supreme Court 30 days thereafter, barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and T.C.A. § 50-6- 225(a)(1).

Four recent Panel opinions adopted by the Supreme Court illustrate the types of contemporary workers' compensation issues coming before the Court. A brief synopsis and link to the full opinions follow:

### ***Estate of Clarence Turnage, et al. v. Dole Refrigerating Co., Inc.***

No. M2019-00422-SC-R3-WC, filed February 12, 2020

The employee died August 3, 2017, because of injuries from a work accident. He was unmarried but lived with and had an out-of-wedlock child, EJT, with Megan Black. It was undisputed EJT was entitled to

workers' compensation death benefits as a *conclusively presumed wholly dependent child* under T. C. A. § 50-6-210 (a)(2). Previously, the employee had two other children out-of-wedlock with another woman. Prior to his death, the employee had surrendered his parental rights to NRT and SMT, and his own mother had adopted the children. NRT and SMT sought workers' compensation death benefits as either *conclusively presumed wholly dependent children* of the employee under §50-6-210 (a)(2), or alternatively, as *partial dependents* under §50-6-210 (d). The Court of Workers' Compensation Claims determined NRT and SMT were not entitled to benefits, either as presumed wholly dependent children or as partial dependents, and awarded EJT benefits equal to 50% of the employee's average weekly wage. NRT and SMT appealed. The Special Workers' Compensation Appeals Panel **affirmed** the judgment.

The proof before the trial court indicated that while the employee was living in Florida with their mother, he left NRT and SMT at home alone after he got into trouble, for which he was required to serve six months in jail. Their mother had also left the home. Initially, the Florida Department of Children's Services placed the children in separate foster homes. Later, the employee's mother took custody of NRT and SMT and they came to live with her in Tennessee. Some years later, the employee's mother adopted the two children. When the employee returned to Tennessee after his release, he moved in with Ms. Black, with whom he had EJT. The employee sporadically provided only limited financial support for NRT and SMT and the two children occasionally spent weekends with the employee. However, his mother usually provided the food for the children during those visits. In the four months before his death, the employee did not interact with NRT and SMT or provide any support, allegedly due to a verbally abusive confrontation he had with his mother in front of the children. On appeal, NRT and SMT tried to analogize their status as parentally surrendered and adopted children to *stepchildren* or *illegitimate children* for purposes of the statutory presumption of wholly dependent children under §50-6-210 (a)(2). The Panel noted the Tennessee Supreme Court had addressed the issue in *Wilder v. Aetna Casualty & Surety Co.*, 477 S.W.2d 1 (Tenn. 1972). The Panel observed "(T)he employee indisputably surrendered all parental rights, and the children were adopted prior to employee's death." NRT and SMT alternatively claimed to be within the class to which subsection (d) applied as either the employee's children or *his brother and sister* because of their adoption by his mother. The Panel determined that *Wilder* controlled the decision, in that the evidence failed to establish they regularly derived part of their support from the wages of the employee at the time of death and for a reasonable time immediately prior to his death. Noting the employee provided no support during the four-month period before his death, the Panel held "It is the absence of support from employee, which served to disqualify NRT and SMT from the receipt of benefits under this subsection [(d)]."

The full opinion is available at

<https://www.tncourts.gov/sites/default/files/20200212083245.pdf>

***Floyd McCall v. Ferrell Paving, et al.***

No. W2018-01676-SC-WCM-WC, Filed January 22, 2020.

The employee, a cement truck driver, sustained injury in a fall at work on October 6, 2014. He received authorized medical treatment for the injury, paid for by the employer. He also received temporary total disability benefits from October 7, 2014 to February 5, 2015. After his release by his authorized treating physician (ATP), he received *unauthorized* medical treatment, including cervical spine surgery. The employee then sought additional temporary total disability benefits and medical benefits, permanent disability benefits and future medical benefits. The Court of Workers' Compensation Claims determined the employee was not entitled to any additional workers' compensation benefits. On appeal by the employee, the Special Panel **affirmed** the trial court's judgment.

The proof at trial reflected the employee's work injury occurred when he lost his balance and fell while standing on the tire of his dump truck as he performed a pre-trip inspection. He landed on his left side, hitting his head, shoulder, elbow and the side of his hip. His ATP treated him with physical therapy and work hardening. After a normal functional capacity evaluation, the ATP released him to return to work without restrictions on April 13, 2015. The ATP concluded based on his diagnostic studies that the employee had a mild progressive degenerative arthritic condition due to age, with no fractures, ruptured discs or abnormal radiculopathy. The ATP testified the employee's neurologic, strength, reflex, and range of motion examinations were all normal, although the employee did have some impingement in his left shoulder that resulted from the degenerative condition and not the fall at work. The ATP testified he saw no reason the employee should need surgery for his left shoulder, left elbow or cervical spine.

When the employee tried to return to work, his employer advised things were slow and gave him an unemployment card. He then worked three or four months for Nike through a staffing agency. His job involved loading boxes of shoes from a conveyor belt onto pallets. The boxes weighed up to 15 pounds. He had an independent medical evaluation in April 2015, but did not tell the physician about the physical requirements of his Nike job. He then began working for Ingersoll Rand, packaging parts that were continuously coming down a conveyor belt. He also operated machinery. All his work required repetitive light lifting. He saw a neurosurgeon in 2016, who recommended cervical spine surgery.

At trial, the employee maintained he had no problems with his neck, shoulder, or elbow before his fall on October 6, 2014, but now had pain, numbness and tingling in his left shoulder, arm, and hand. Since the cervical surgery, he said he had no neck pain. Testimony from the neurosurgeon indicated that by January 13, 2017, the employee had spondylosis and a disc osteophyte complex at C6-7, and that stenosis was worsening. He performed surgery on March 23, 2017, testifying the surgery was medically necessary because of the employee's work injury on October 6, 2014. The proof indicated neither the evaluating physician nor the neurosurgeon had any information about the type of repetitive lifting performed by the employee after his release by the ATP. Both physicians agreed the objective medical test results compiled by the ATP were significantly different from the tests they later ordered and reviewed. The trial court ruled the medical proof of the employee failed to rebut the statutory presumption of correctness of the conclusions by the ATP that the cervical spine issues were unrelated to the work injury. The Panel concurred that the ATP's unequivocal testimony supported by diagnostic studies, including MRIs and EMGs taken soon after the employee's fall at work, revealed no cervical issues that required surgery. A neurosurgeon who testified on behalf of the employer supported the ATP's conclusions.

The full opinion is available at

[https://www.tncourts.gov/sites/default/files/mccallopn.docx\\_.pdf](https://www.tncourts.gov/sites/default/files/mccallopn.docx_.pdf)

***Kevin W. Taylor v. G.UB.MK Constructors***

No. R2019-00461-SC-R3-WC, filed June 2, 2020.

The employee, who worked as a union boilermaker from 1999 to November 2013, filed a workers' compensation claim on January 10, 2018, alleging permanent hearing loss because of his working environment. The employee contended he learned of the causal connection between his work and his hearing loss on June 30, 2014 and promptly gave notice to his employer in July 2014. The trial court determined the hearing loss claim was compensable and based on a 14.1% anatomical impairment rating, awarded the employee 56.4% permanent vocational disability. The employer appealed. The Special Panel agreed the claim was compensable, but **modified** the vocational disability to 30%.

At trial, the employee testified of his exposure to loud industrial noise over a long working career as a

certified welder, millwright and boilermaker, as well as his 20-years' service with the Army National Guard where he was required to participate in target practice with an M-16 rifle. As a boilermaker for his last 13 years of work with the employer, he performed maintenance of machinery and equipment at fossil-fuel steam plants. According to the employee and the testimony of a coworker, the noise in a steam plant was loud and confined, and pneumatic tools used by boilermakers created loud continuous popping sounds like a "Jake brake" on a tractor-trailer. The noise level was so high workers had to use hand signals to communicate with each other. By the time of his trial on February 27, 2019, the employee said he was necessarily using closed captioning on his television set and having significant difficulty hearing and understanding people in person and on a telephone. The proof indicated his employers began to be more stringent about requiring hearing protection by 2006, and he began using earplugs, which "helped some." In his earlier years of working as a boilermaker, he had no hearing protection. After his last assignment with his employer, the employee could not find work and retired on March 1, 2014. His inability to find work was due more to problems with his heart, back, shoulder and knee that made it hard for him to walk, climb, squat, or lift over 40 pounds. He had never turned down or left a job because of hearing problems. Expert proof at trial confirmed that the employee had suffered permanent, noise-induced hearing loss in both ears. It was not clear that noise levels at the employee's various work locations were distinguishable or whether the conditions at his last assignment site were the primary cause of the hearing loss or made it worse. The trial court found the cause of the hearing loss to be the employee's cumulative noise exposure during his work as a boilermaker over several years.

The employer contended the employee failed to give timely notice, failed to file his claim within the statute of limitations, and did not prove his hearing loss was attributable to the period from October to November 2013, his final stint with the employer. The evidence indicated the employee had worked for the employer by assignment on 23 occasions over 14 years, and although medical evidence did not establish a single incident or time-period, his noise exposure as a boilermaker over several years caused a progressive problem. The Panel observed that with hearing loss and other gradually occurring injuries, the timeframes applicable to notice and the statute of limitations are "difficult to determine because these injuries tend to occur over lengthy periods of time." In these types of cases, the statute of limitations begins "to run 'at that time when the employee, by a reasonable exercise of diligence and care, would have discovered that a compensable injury had been sustained.'" *Gerdau Ameristeel, Inc. v. Ratliff*, 368 S.W.3d 503, 509 (Tenn. 2012). "Therefore, an employee who sustains a gradually occurring injury may be relieved of the notice requirement until a medical diagnosis confirms the injury." *Banks v. United Parcel Service, Inc.*, 170 S.W.3d 556,561 (Tenn. 2005). The Panel explained the purpose of the "last day worked" rule is to prevent employees with gradually occurring injuries from losing the opportunity to bring workers' compensation claims due to the running of the statute of limitations. *Barker v. Home-Crest Corp.*, 805 S.W.2d 373, 375 (Tenn. 1991). Since the trial court did not make specific findings of fact as to the extent the employee's hearing loss impaired his earning capacity, the Panel determined it could make its own determination based on the preponderance of the evidence. It found other factors affected the employee's earning capacity, such as age, education, physical limitations, and medical conditions, rather than just his hearing loss, and modified the vocational disability award.

The full opinion is available at

[https://www.tncourts.gov/sites/default/files/taylorkevin\\_filed.opn .pdf](https://www.tncourts.gov/sites/default/files/taylorkevin_filed.opn.pdf)

---

The employee, a Georgia resident, drove a truck for a Tennessee employer. He was hurt in a vehicle accident in Tennessee on November 3, 2016. He reported the injury to his employer, who filed a first report of injury and paid for his emergency treatment. The employer paid no additional benefits. In January 2017, the employee filed a claim seeking benefits with the Georgia State Board of Workers' Compensation. The defendants argued the Georgia Board did not have subject matter jurisdiction. In October 2017, while still pursuing benefits in Georgia, the employee filed a claim for workers' compensation benefits in Tennessee. In January 2018, after the parties had engaged in discovery, the Georgia Board held a hearing, and without addressing the merits, dismissed the employee's claim for lack of subject matter jurisdiction. Six months later, the employee filed an amended claim in Tennessee. The Defendants moved for summary judgment, asserting the affirmative acts taken by the employee to obtain workers' compensation benefits in Georgia barred him from receiving such benefits in Tennessee under the *election of remedies doctrine*. The employee responded the doctrine did not apply because the Georgia Board lacked subject matter jurisdiction. The *Court of Workers' Compensation Claims* (CWCC) denied the motion for summary judgment. The Georgia Board never addressed the merits of the claim, according to the CWCC. It further found that instead of unfairly manipulating the Tennessee legal system, the employee was just seeking to have a determination on the merits.

The *Workers' Compensation Appeals Board* (WCAB) reversed the denial of the motion for summary judgment in a split decision. The lead majority opinion emphasized the employee had pursued benefits under the Georgia system by engaging in extensive discovery, participating in a hearing, and offering testimony and documentary evidence on the merits of his case. Because the employee knowingly elected to pursue benefits in Georgia, the majority held his failure to establish subject matter jurisdiction did not prevent application of the election of remedies doctrine in Tennessee. The dissenting opinion viewed the majority's opinion as "an unduly strict and unnecessarily harsh interpretation" of Tennessee's election of remedies doctrine that left the employee without a remedy. The Special Panel **reversed** the WCAB and **remanded** for further proceedings in the CWCC, finding the election of remedies doctrine did not apply under the facts and circumstances. Even though the employee pursued workers' compensation benefits in Georgia, that state lacked subject matter jurisdiction. Thus, the employee did not have a remedy to elect in Georgia. The employee relied on *Gray v. Holloway Construction Co.*, 834 S.W.2d 277 (Tenn. 1992). In *Gray*, the Tennessee Supreme Court held the election of remedies doctrine barred an employee who actively pursues a claim *in a venue that has jurisdiction* from filing a subsequent claim in Tennessee. For the doctrine to apply there must be one or more available remedies for the party to choose. Two later cases relied upon by the defendants, *Bradshaw v. Old Republic Ins. Co.*, 922 S.W.2d 503 (Tenn. 1996) and *Eadie v. Complete Co.*, 142 S.W.3d 288 (Tenn. 2004) omitted the "venue with jurisdiction" element set forth in *Gray*. The Panel held the omission did not modify the *Gray* doctrine because the lack of subject matter jurisdiction or of any other venue were not issues in *Bradshaw* and *Eadie*. "In sum, an injured employee cannot elect a remedy that is unavailable." (p. 5)

The full opinion is available at

[http://www.tncourts.gov/sites/default/files/goodwin\\_unsigned\\_opinion.pdf](http://www.tncourts.gov/sites/default/files/goodwin_unsigned_opinion.pdf)

**Note:** During calendar year 2019, the Supreme Court and its Special Workers' Compensation Appeals Panels issued opinions in 28 cases between January 16, 2019 and December 19, 2019. Eighteen of the opinions involved "old law" cases, or those in which the work-related accidents were prior to July 1, 2014, the effective date of the *Workers' Compensation Reform Act of 2013*. Ten opinions issued in "new law" cases. Five of those involved appeals from the *Court of Workers' Compensation Claims* and four came

directly from the *Workers' Compensation Appeals Board*. One came from the *Tennessee Claims Commission*. Two *Court of Appeals* cases and one interlocutory appeal to the Supreme Court were also included in the Advisory Council's report of significant workers' compensation decisions in 2019. Through June 15, 2020, the Special Panel has issued five opinions involving "old law" cases, indicating that far fewer of them are working their way through the appeals process. Direct appeals to the Supreme Court should continue to decrease as more "new law" cases resolve in the *Court of Workers' Compensation Claims* and the *Workers' Compensation Appeals Board*.

## TOSHA NEWS

The Tennessee Department of Labor and Workforce Development, in cooperation with the U. S. Bureau of Labor Statistics, reported 122 work-related fatalities in Tennessee in 2018, compared to 128 in 2017, reflecting a decrease of approximately 4.7%. The highest number of fatal occupational injuries (45) involved workers in the major occupational groups of transportation and material moving.

According to the Bureau's 2018 non-fatal occupational injury and illness statistics, Tennessee's incidence rate was 2.8 per 100 full time workers in the *private* sector, statistically in line with the national average of 2.8. The overall recordable case incidence rate for nonfatal occupational injuries and illnesses in Tennessee for all industries, including state and local government, was 3.0. State government had the lowest incidence rate at 2.8, and local governments had the highest incidence rate, at 4.4 recordable incidents per 100 full-time equivalent workers.

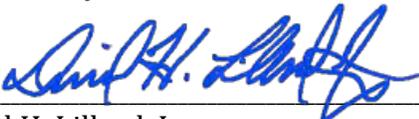
In 2018, of approximately 19,130 non-fatal occupational injuries and illnesses resulting in actual days away from work, 59.8% involved male workers and 39.9% involved female workers. Approximately 23.7% of the injuries and illnesses requiring days away from work occurred to those between 45 and 54 years of age. Some 21.7% involved employees between 25 and 34 years of age.

The Tennessee Department of Labor and Workforce Development report is available at <https://www.tn.gov/content/dam/tn/workforce/documents/majorpublications/reports/2018TNCensusFatalOccupationalInjuries.pdf>

## CONCLUSION

The Advisory Council on Workers' Compensation met on three (3) occasions from July 1, 2019 through June 30, 2020. This annual report provides a synopsis of the topics considered and appointments made within that time. The Advisory Council appreciates the opportunity to be of service to the Governor, the General Assembly and Executive Departments, as well as the employers and employees of the great State of Tennessee.

Respectfully submitted on behalf of the Advisory Council on Workers' Compensation,

/s/ 

David H. Lillard, Jr.  
Treasurer, State of Tennessee  
Chairman

/s/ 

Larry Scroggs  
Administrator



AUGUST 2020

ADVISORY COUNCIL ANNUAL REPORT  
OF SIGNIFICANT SUPREME COURT  
WORKERS' COMPENSATION OPINIONS  
FOR 2019  
EXHIBIT 2

LARRY SCROGGS  
STATE OF TENNESSEE, TREASURY DEPARTMENT



# STATE OF TENNESSEE

## *Advisory Council on Workers' Compensation*

<https://treasury.tn.gov/Explore-Your-TN-Treasury/About-the-Treasury/Boards-Commissions/Advisory-Council-on-Workers'-Compensation>



---

### 2019 SUMMARY OF SIGNIFICANT TENNESSEE SUPREME COURT WORKERS' COMPENSATION DECISIONS

---

TREASURY DEPARTMENT  
STATE CAPITOL  
NASHVILLE, TENNESSEE 37243-0225

**David H. Lillard, Jr., State Treasurer, Chair**  
**Larry Scroggs, Administrator**

# Significant 2019 Tennessee Supreme Court Workers' Compensation Decisions

## INTRODUCTION

Pursuant to Tennessee Code Annotated (“T. C. A.”) § 50-6-121(i), the Advisory Council on Workers' Compensation is required to issue this report reviewing significant Tennessee Supreme Court decisions involving workers' compensation matters for each calendar year. This report contains a synopsis of the cases with topical headings to facilitate review of the 2019 decisions from the Tennessee Supreme Court.

### The Tennessee Supreme Court

Appeals of decisions in workers' compensation cases by trial courts, including the Circuit and Chancery Courts, the Court of Workers' Compensation Claims, the Tennessee Claims Commission, and appeals from Workers' Compensation Appeals Board decisions, are referred directly to the Supreme Court's Special Workers' Compensation Appeals Panel (“Panel”) for hearings. Participating judges who comprise the Panels are designated by the Supreme Court and each Panel includes a sitting Justice. The Panel gives considerable deference to the lower trial courts' decisions with respect to credibility of witnesses since the lower trial courts have the opportunity to observe individuals testify. The Panel reports its findings of fact and conclusions of law, and such judgments automatically become the judgment of the full Supreme Court thirty (30) days thereafter, barring the grant of a motion for review. Tennessee Supreme Court Rule 51 and T. C. A. § 50-6-225 and *see also* T. C. A. § 50-6-217(a)(2)(B), relative to the appeal process from the Workers' Compensation Appeals Board.

### The Tennessee Supreme Court Special Workers' Compensation Appeals Panel

The Supreme Court and its Special Workers' Compensation Appeals Panel issued opinions in 28 cases between January 16, 2019, and December 19, 2019. Eighteen opinions were “**old law**” cases, based on claims arising prior to the July 1, 2014, effective date of the Workers' Compensation Reform Act of 2013. Ten opinions were issued in “**new law**” cases. Five of those involved appeals from the *Court of Workers' Compensation Claims* and four came directly from the *Workers' Compensation Appeals Board*. One came from the Tennessee Claims Commission. **Note:** Two Court of Appeals cases and one interlocutory appeal to the Supreme Court are also included in this report due to their significance.

With the passage of time, fewer “**old law**” cases will work through the appeals process. Direct appeals to the Supreme Court should gradually decrease as more cases are resolved in the Court of Workers’ Compensation Claims and the Workers’ Compensation Appeals Board. Summaries of the cases decided by the Supreme Court and its Special Workers’ Compensation Appeals Panel in 2019 are presented here, with headings that constitute a workers’ compensation “issues list.”

## **TABLE OF ISSUES**

### **Procedure**

Statute of Limitations .....	Page 4
Notice .....	Page 4
Attorney Fees .....	Page 6
Subrogation Lien .....	Page 7

### **Causation**

Burden of Proof .....	Page 7
Misconduct Exception .....	Page 11

### **Compensability**

Employer/Employee .....	Page 12
Burden of Medical Proof .....	Page 14

### **Medical Proof**

Psychological Injury .....	Page 15
Panel Referral .....	Page 16
Exposure .....	Page 16
Impairment .....	Page 17
Increased Benefits .....	Page 18
Future Medical .....	Page 19
Permanent and Total Disability .....	Page 19
Second Injury Fund .....	Page 21
Presumption Afforded Authorized Treating Physician (Rebuttal) .....	Page 22

## **Procedure**

### **1. Statute of Limitations**

[\*Cheryl Lynn Williams v. SWS LLC d/b/a SecureWatch, No. E2018-00922-SC-R3-WC\*](#) – Filed September 20, 2019.

The employee claimed she sustained a compensable injury due to mold exposure during her work with the defendant, which began in 2010. The employer moved for summary judgment, contending the statute of limitations barred her claim. The trial court granted the motion and dismissed the case. The appeal was referred to the Special Panel, which **reversed** the judgment and **remanded** for a trial on the merits. The employee began experiencing upper and hypo pharyngeal airway symptoms after her employer's move into a new building in June 2010. In January and July of 2011, she missed time from work and had two surgical procedures, one involving her tonsils. On August 1, 2011, the employee wrote her employer that her physician attributed her condition to mold exposure in her work environment. She left her position voluntarily on April 25, 2012, after finding another job. On December 17, 2012, the employee filed a request for assistance and then filed a complaint on June 24, 2013. The trial court applied the "discovery rule," holding that the employee did not timely file because she waited more than one year from when she knew or should have known her injury was work related. The Panel found that genuine issues of material fact existed "concerning whether the employee's condition was a gradually occurring injury and/or an occupational disease." The Panel disagreed with the employer's contention that the last day worked rule applied because the employee was incapacitated for work during her treatment. The Panel noted that in *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007), the Court held that an employee's absence from work for treatment will not begin the running of the statute of limitations in an occupational disease case if the employee's capacity to work is affected only by the treatment, not by the disease." *Id.* at 923.

### **2. Notice**

[\*Richard Moser v. Hara, Inc. d/b/a Hot Shot Delivery, et al., No. M2018-02045-SC-R3-WC\*](#) – Filed September 25, 2019.

The employee began working as a truck driver for the defendant in 2010. He alleged he sustained a compensable injury on August 12, 2013, when he tried to pull a duffel bag from his truck. He provided timely notice to the employer, but the employer refused to provide any benefits. The employer contended the employee was actually injured in August 2014, when he cranked a landing gear on a trailer and that he did not provide adequate notice of the 2014 injury. The employee had filed a request for assistance for the 2013 injury in July

2014, before the 2014 injury occurred. Although the employee missed some work and sought medical treatment for the 2014 injury, he testified about his continuing symptomology from the 2013 injury. The employee's physician opined that the 2014 injury aggravated the earlier injury and exacerbated its symptoms, which included nerve damage, disc protrusions, lumbar radiculopathy, and foot drop. The trial court found the employee sustained a compensable injury in August 2013, and awarded permanent partial disability benefits. The Panel **affirmed**. The employer's appeal raised two issues, whether the evidence preponderated against the trial court's finding that the August 2013, caused the employee's permanent injury, and whether the award was unsubstantiated. The employer also relied on an independent intervening cause defense, but the Panel noted the August 2014, injury was itself work-related and not a result of negligence.

[\*Bettye Shores v. State of Tennessee, No. M2018-00954-SC-R3-WC\*](#) – Filed February 12, 2019.

The employee, a program coordinator for the Tennessee Department of Human Services, alleged she suffered a mental injury on July 1, 2016, when a supervisor's reprimand "lit up" her preexisting post-traumatic stress disorder stemming from an automobile accident during her childhood. The employee did not give written notice of the alleged injury until November 9, 2016. The employer moved to dismiss the claim, contending the employee had failed to give timely notice of the alleged injury under T. C. A. § 50-6-201 (Supp. 2017). After a hearing, the Claims Commissioner granted the motion to dismiss. The employee appealed, contending she had been incapable of reporting a work-related injury from August through October of 2016 due to her hospitalization for suicidal ideations. The Panel **affirmed** the Commissioner's judgment.

The proof indicated the employee claimed her supervisor had accused her of being "untrustworthy," a "liar," and "dishonest" relative to remarks the employee said her supervisor made in jest to a coworker about a promotion. The employee claimed the reprimand reactivated her PTSD from a serious childhood accident, after which she had been subjected to disparagement and mistreatment from classmates during her recovery. She testified she did not realize she had suffered a work-related injury until November 2016, during her medical treatment for suicidal issues. The supervisor said she knew the employee had taken Family Medical Leave in July 2016, but was unaware of the reason and only learned about the employee's work injury claim in mid-November. The Panel found it was undisputed no timely written notice was given and that the employer had no actual knowledge of a work injury. In the absence of actual knowledge or waiver of notice by the employer, or reasonable excuse by the employee for not giving notice, statutory notice is an "absolute prerequisite to the right of the employee to recover benefits." [Citing *Jones v. Sterling Last Corp.*, 962 W.W.2d 469, 471 (Tenn. 1998) and *Aetna Cas. & Sur. Co. v. Long*, 569 W.W.2d 448 (Tenn. 1978)]. Waiver of notice was not considered since it was raised for the

first time on appeal and should have been brought up at a Benefit Review Conference. The Panel also determined the employee's reliance on *reasonable excuse* was belied by her own assertions she had immediate suicidal ideations from the incident yet claimed she was unaware of an injury until causation was established by subsequent medical confirmation.

### 3. Attorney Fees

[Shirley Keen v. Ingles Markets, Inc., No. E2018-00306-SC-R3-WC](#) – Filed May 14, 2019.

The employee, a store worker, sustained a compensable injury in 1997. The settlement in 1999 preserved her right to future medical treatment. In 2016, her employer refused to pay for medical treatment based on a utilization review under T. C. A. § 50-6-124. The trial court granted the employee's motion to compel the medical treatment and held in abeyance her request for attorney fees under T. C. A. § 50-6-204(b)(2). The employee filed a second motion to compel the employer to provide a certain medication, Nexium. At that time, the trial court awarded attorney fees, but less than as requested. Both parties appealed. The employee contended the trial court erred in awarding attorney fees in failing to make findings based on the factors in Supreme Court Rule 8, Rule of Professional Conduct 1.5(a) (RPC 1.5(a)). The employer claimed the trial court erred by issuing the second order to compel. The Panel **vacated** the trial court's award of attorney fees and **remanded** for determination of attorney fees under RPC 1.5(a). The second judgment to compel for the particular medication was **affirmed**. The utilization review had determined certain prescribed medications including trigger point injections were not medically necessary and also that the employee should be weaned from some medications. The employee filed a first motion to compel and a second such motion relative to one prescribed drug, both of which were granted. The trial court did not order requested attorney fees for the first motion to compel but did so for the second motion, although the amount sought was reduced by half. Experienced attorney witnesses for both parties offered conflicting testimony about the reasonableness of the requested fees. Although the trial court indicated it had reviewed the ten factors in RPC 1.5(a), it made no specific findings about each factor. The Panel observed that in awarding attorney fees a trial court must "develop an evidentiary record and clearly and thoroughly explain its findings concerning each of the factors and the particular circumstances supporting its determination of a reasonable fee in each case." *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 185-186. "It is insufficient for a trial court to merely allude to the factors."

#### 4. Subrogation Lien

[Memphis Light, Gas & Water Division v. Tykena Watson, et al., No. W2018-00218-COA-R3-CV](#) – Filed February 13, 2019.

This Court of Appeals case of first impression is included because of the issue raised, which is whether case management fees are recoverable as part of an employer's workers' compensation subrogation lien under T. C. A. § 50-6-112. The Court of Appeals **affirmed** the trial court's judgment that such fees are not recoverable as part of the subrogation lien. The employee, a meter reader, had suffered injuries when a dog attacked her. Memphis Light, Gas & Water Division (MLGW) provided workers' compensation benefits and a settlement agreement was approved on January 6, 2015. The employee also pursued a tort claim in a third party action. The tort case settled for \$80,000 in November 2015. MLGW sued its employee and her attorney to enforce its subrogation lien under § 50-6-112, asserting it had paid over \$40,000 in workers' compensation benefits. The defendants did not dispute that MLGW was subrogated to a part of the tort settlement, but raised two issues: they claimed the attorney was entitled to a fee as compensation in settling the tort claim where recovery was beneficial to MLGW, and second, that MLGW's lien should not include certain case management fees claimed by MLGW totaling \$10,691.01. The trial court determined that "T. C. A. § 50-6-112 does not provide for an employer to recover case management fees as part of its subrogation lien against an employee's third-party claim." MLGW had contended case management was required by law. The defendants had argued case management was a service to save employer costs, not a benefit to the employee. The Court of Appeals disagreed with MLGW's position that case management was required in this case, finding it was discretionary for employers based on a 2004 amendment to T. C. A. § 50-6-123, and a subsequent regulation amendment in 2007 (Tenn. Comp. R & Regs. 0800-2-7-03.(1) (2007)). The Court of Appeals held case management was not a benefit to an employee but rather a cost control service for the employer.

### **Causation**

#### 1. Burden of Proof

[Tina E. Hayes v. Costco and Liberty Mutual Insurance Company, No. W2017-02130-SC-R3-WC](#) – Filed February 12, 2019

The employee, a stocker for the employer, alleged she sustained a compensable injury to her left knee on April 8, 2015, while at work. She claimed the injury required her to undergo left knee replacement surgery. The Court of Workers' Compensation Claims held the employee had failed to establish by a preponderance of the evidence a compensable injury or

aggravation arising primarily out of and in the course and scope of her employment. On the appeal by the employee, the Panel **affirmed** the trial court's judgment. The physician selected by the employee from the panel provided by her employer acknowledged she had related a history of twisting her left knee at work; however, he indicated she was suffering from osteoarthritis with an arthritic flare and recommended conservative treatment instead of surgery. Ultimately, he cleared her to return to work with no restrictions and no impairment rating. The physician saw the employee again after she experienced a popping in her knee while at home. His impression at the last visit on August 10, 2015, was early degenerative changes, including a degenerative meniscus tear in the left knee. He again recommended against surgery, but did refer her to another orthopedic surgeon after concluding the knee issues were not causally related to her work injury. The second surgeon performed a left knee replacement on October 29, 2015. The employee's attorney later requested that the employee see another physician for an independent medical evaluation. That physician opined that the employee's injury on April 8, 2015, necessitated the left knee replacement surgery and assigned a seven percent (7%) permanent impairment to the left lower extremity, however his testimony lacked specificity. The trial court determined the employee's evaluating physician's testimony was insufficient to prove her work injury contributed more than fifty percent (50%) to causing her disability under T. C. A. § 50-6-102(13) (2014). The trial court also held that even if sufficient to meet applicable standards, it did not overcome the statutory presumption afforded the testimony of the authorized treating physician.

[\*Donald R. Loveless v. City of New Johnsonville, et al. No. M2018-00523-SC-R3-WC\*](#) – Filed February 15, 2019

The employee fell while at work at the defendant employer's water plant on February 9, 2014, sustaining injuries to his lower back, right leg, and right foot. The employee initially saw a primary care physician who prescribed medications and physical therapy while the employee remained off work for a month. The employee then selected a neurosurgeon as his authorized treating physician (ATP) from the panel provided by his employer. The authorized treating neurosurgeon testified that the February 9, 2014, fall resulted in a soft tissue injury, but no anatomical changes and no impairment rating. A second ATP concluded there was no permanent impairment and that the employee had spondylosis, or mild arthritis, but not spondylothesis (slipping of vertebrae over the one below). The employee's attorney referred him to a third physician, who diagnosed degenerative lumbar spondylothesis with radiculopathy and assigned a nine percent (9%) impairment. He concluded the conditions were causally related to the fall. The trial court awarded the employee benefits based on a seven and one-half percent (7.5%) permanent partial impairment. On appeal, the Panel noted two authorized treating physicians had opined the employee's fall had caused no permanent anatomical impairment. The Panel also observed

that on cross examination the employee's physician had acknowledged that spondylothesis must be established radiographically and had conceded that he had no such data available to him. The opinions of the ATPs were "presumed to be correct, unless rebutted by a preponderance of the evidence." T. C. A. § 50-6-102(12)(A)(ii) (Supp. 2013). The Panel **reversed** the trial court's judgment, holding the employee had not sustained a compensable injury.

[\*Roger Joiner v. United Parcel Service, Inc., et al.\*, No. M2018-01876-SC-R3-WC](#) – Filed December 6, 2019.

The employee hurt his neck while lifting a mail sack at work on February 26, 2016. The employer provided medical benefits, but limited them to treatment at the C6-7 level of the employee's cervical spine where tests indicated a disc rupture. As the ATP found that mild disc degeneration at the C5-6 level was not causally related, the employer refused benefits for treatment at that level. The employee was evaluated independently by another physician, who concluded the work accident had indeed caused injury at the C5-6 level, indicated by a disc rupture there as well as at the C6-7 level. The trial court concluded the causation opinion of the evaluating physician overcame the statutory presumption afforded by the ATP's opinion and awarded permanent partial disability and medical treatment benefits for both cervical levels. The employer appealed to the *Workers' Compensation Appeals Board* (WCAB), which reversed the trial court's judgment as to the C5-6 level, excluding treatment for that condition. On appeal, the Special Panel **reversed** the WCAB, holding that the causation opinion of the evaluating physician "was more persuasive and that it was sufficient to rebut the presumption afforded the causation opinion of (the ATP)." The Panel agreed with the dissenting judge on the WCAB, who had concluded that prior to the injury at work, the employee had no prior cervical injuries and had not experienced prior symptoms. It was undisputed the employee had suffered compensable injury to his cervical spine when lifting the mail bag and that he had experienced pain and numbness in both arms and tingling in his right hand immediately after the injury, although he had more pain around his left shoulder and arm. According to the evaluating physician, the employee's degenerative condition at the C5-6 level was "sub-clinical" before the accident and "became clinical" after the accident. The Panel held that a totality of the evidence was sufficient to support the trial court's judgment, which it reinstated.

[\*Jerry Coleman v. Armstrong Hardwood Flooring Company and Indemnity Insurance Company of North America\*, No. W2017-02498-SC-R3-WC](#) – Filed April 12, 2019.

This case illustrates a physician's extrapolation of a portion of an employee's hearing loss related to conditions other than noise exposure. The trial court accepted the methodology used by the physician, a hearing specialist, to support a finding of permanent partial

disability based on a modified impairment rating. Prior to his retirement, the employee had regularly driven a dump truck in and around an area containing a very large wood chipper, an exceptionally loud machine. The employer provided protective devices and annual hearing tests for its employees, but when the employee retired in June 2015, he was suffering from hearing loss in both ears. He filed a Petition for Benefit Determination and selected a hearing specialist from a panel provided by the employer. The physician determined the employee had suffered sensorineural hearing loss due to noise exposure, but had also sustained some conductive hearing loss, usually attributable to eardrum damage, infection related scarring, or otosclerosis, a type of bone overgrowth in the inner ear. The employer argued the specialist did not use an appropriate method to assign an impairment rating. The trial court found the physician's explanation of how he arrived at an impairment rating to be consistent with AMA guidelines. After arriving at an overall impairment rating, the physician extrapolated the level of non-noise exposure related loss, resulting in a modified rating for the sensorineural loss. The Special Panel **affirmed** the trial court's judgment.

[\*Ameenah House v. Amazon.Com, Inc.\*, No. E2017-02183-SC-R3-WC](#) – Filed March 16, 2019.

The employee filed a *pro se* workers' compensation claim against her employer, alleging work-related back and leg injuries arising from two incidents on November 20, 2014, and April 6, 2015. In the first incident, a forklift struck the back of the one on which she was standing. The evidence was unclear whether a panel of physicians was offered by the employer or accepted by the employee. She sought treatment from a chiropractor and had physical therapy. In the second incident, she was allegedly thrown down on a pallet by another employee. The employer arranged for an independent medical evaluation. The employer's physician associated the employee's complaints with pre-existing arthritis and said her problems were not causally related to her work. The trial court denied benefits, ruling the employee had not provided a causative opinion even though chiropractors testified she had permanent medical impairment. On appeal, the Panel **affirmed** the trial court's judgment, adopting the opinion of the WCAB. The employee was simply unable to properly present a causative opinion and the trial and appellate courts were prohibited from assisting her. The WCAB cited *Webb v. Sherrell*, No. E2013-02724-COA-R3-CV, 2015 Tenn. App. LEXIS 645, at \*5 (Tenn. Ct. App. Aug. 12, 2015), "(A)ppellate courts will not 'dig through the record in an attempt to discover arguments or issues that [a pro se party] may have made had [that party] been represented by counsel as doing so would place [the opposing party] in a distinct and likely insurmountable and unfair disadvantage.'"

## 2. Misconduct Exception

[Tennessee Clinical Schools, LLC, d/b/a Hermitage Hall v. Jeffrey E. Johns, No. M2018-00985-SC-R3-WC](#) – Filed August 2, 2019.

The employee, a healthcare worker, had worked two months in a therapeutic residential treatment facility for trauma-based teenagers when he sustained a left shoulder injury during an incident in which he restrained a youth using a one-person hold. His employer filed a petition for benefit determination. The employee answered, and the trial court issued an order in favor of the employee. The employer appealed, contending the employee had engaged in disqualifying willful misconduct under T. C. A. § 50-6-110(a)(1). The employer had policies prohibiting physical restraint unless necessary to protect the resident or others from imminent harm. The employee testified he did not knowingly or intentionally violate the policies prohibiting the use of force, and used the restraint method only after the youth struck him. The trial court found that the employee had notice of the policies, recognized the danger in violating them, and did not have an objective excuse for violating them, but that the employer had not satisfied its burden to show it had engaged in bona fide enforcement of the policies. The Panel **affirmed** the trial court’s judgment in favor of the employee after analyzing the case in view of the four-part test developed by Professor Larson for evaluating claims of willful misconduct or willful failure to follow safety rules as a defense. The employer claimed the trial court had misapplied the Larson test. The test had been adopted by the Supreme Court in *Mitchell v. Fayetteville Public Utilities*, 368 S.W.3d 442, 453 (Tenn. 2012). Although it reversed the trial court’s finding that the employer had not carried its burden of showing bona fide enforcement of its policies, the Panel agreed with the trial court’s finding that the employer had not proved the employee’s conduct was willful or “more than mere error in judgment, negligence, or even recklessness.” (Citing *Nance v. State Industries, Inc.*, 33 S.W.3d 222 (Tenn. Special W.C. Panel 2000), distinguishing willful conduct from error in judgment.)

[Corey Bunton v. Sanderson Pipe Corp., et al., No. M2018-01028-SC-R3-WC](#) – Filed August 14, 2019.

The employee, a lead line operator, sustained a hand injury while attempting to clean a drain in a beller machine making PVC pipe. The disputed fact issue was whether he turned off the machine before reaching in to clean the drain. Failure to turn off moving machinery before attempting cleaning was a company policy violation. The employer relied upon the willful conduct defense. The employee acknowledged he knew and understood the policy, but insisted he turned the machine off first. Co-workers’ testimony and video evidence indicated otherwise. The trial court denied the employee’s claim, concluding he had engaged in willful conduct which barred any recovery. On appeal, the Panel **affirmed** the trial court’s judgment,

again considering the test set forth in *Mitchell v. Fayetteville Pub. Utilities*, 368 W.W.3d 442 (Tenn. 2012). The employee contended the trial court had incorrectly eliminated the “willful” requirement outlined in *Mitchell*, insisting the trial court held *Mitchell* had abolished the requirement that an employer asserting a willful misconduct defense must establish the employee’s misconduct was willful in order to prevail. The Panel disagreed, noting the trial court had specifically found from the evidence that the employee intended to place his hand in the moving machine in violation of company policy.

## **Compensability**

### **1. Employer-Employee Status and Obligations**

[\*Jimmy Wayne Helton v. Earl Lawson, No. E2018-02119-COA-R3-CV\*](#) – Filed December 18, 2019.

This Court of Appeals case discusses criteria required to establish the employer-employee relationship. The defendant, a residential contractor who decided to build a house for himself on a lot he owned, contracted with a local “handyman” to help with the work. The handyman in turn hired the plaintiff as a laborer. The plaintiff sustained a fractured ankle when he fell after a makeshift scaffold collapsed while he was hanging vinyl siding. Instead of seeking workers’ compensation, the plaintiff sued the defendant, contending he was entitled to seek his remedy in tort because the defendant failed to carry workers’ compensation insurance or have a valid certificate of insurability under T. C. A. § 50-6-405(a). The employee moved for partial summary judgment on the issue of liability – duty and breach of duty. Under § 50-6-405(c), the defendant could not set up as a defense that the employee was negligent, that the injury was caused by a fellow employee, or that the employee had assumed the risk of injury. While admitting he did not carry workers’ compensation insurance, the defendant claimed there was a disputable issue of material fact as to who was the plaintiff’s employer. The trial court concluded the plaintiff’s employment status was in dispute and denied the motion. At trial, the defendant acknowledged he paid the bills and basically controlled the operation, but that the handyman hired the plaintiff. The jury found the plaintiff to be the employee of the handyman, not the defendant and awarded no damages. In a lengthy analysis, the Court of Appeals reviewed the workers’ compensation statutes in determining the requirements for providing or excluding coverage and the factors to consider when deciding whether a worker is an employee or an independent contractor. The Court of Appeals ultimately concluded the plaintiff was an employee of the non-party handyman, who had a direct contract, not a subcontract, with the defendant owner, “even if the owner holds himself out as, and performs the duties of, a general contractor.” (Citing *Winter v. Smith*, 914 S.W.2d 527, 539-40 (Tenn. Ct. App. 1995). The Court of Appeals **affirmed** the jury’s verdict

but **vacated** and **remanded** the zero damages award, stating it was not supported where it was uncontroverted the plaintiff suffered an injury that required evaluation and treatment.

[\*Katherine D. Chaney v. Team Technologies, Inc.\*](#), No. E2018-00248-SC-R9-WC – Filed January 31, 2019.

The employee collapsed at work due to a cardiac arrest, a non-work related medical condition. The employer knew of the employee’s immediate need for medical assistance. The employer had previously acquired an automated external defibrillator (AED), but did not use it to assist the employee while awaiting emergency medical responders. The employee suffered permanent brain damage due to oxygen deprivation. The employee filed suit for workers’ compensation benefits for the injuries resulting from the employer’s failure to use the AED. The employer moved to dismiss on two grounds: first, that the employee’s injury was unrelated to her employment; and second, that an employer has no statutory or common law duty to use an acquired AED, citing *Wallis v. Brainerd Baptist Church*, 509 S.W.3d 886 (Tenn. 2016). The employee asserted that under the “emergency rule,” *Vanderbilt University v. Russell*, 556 S.W.2d 230 (Tenn. 1997), the employer had a duty to provide her with medical assistance, which included using its AED, and that *Wallis* did not apply since it involved a duty owed to a business invitee, not an employee.

In this interlocutory appeal, the full Supreme Court **reversed** the trial court’s denial of the employer’s motion to dismiss and **remanded** the case for an order of dismissal. The Court revisited its decision in *Russell*, where it had held that when an employee becomes helpless at work because of illness or other cause unrelated to her employment, needs medical assistance to prevent further injury, and the employer can make such medical assistance available but does not do so, then any disability caused by the failure of the employer is considered to have “arisen out of and in the course of the employment.” In *Russell*, the Court adopted the emergency rule based on the common law rule that when an employee becomes helpless by an unforeseen accident while doing his job, the “dictates of humanity, duty, and fair dealing demand that the employer, if cognizant of the injury, furnish medical assistance.” *Id.* “The basic premise of the Russell emergency rule remains good law.” “Humanity, duty, and fair dealing” still require an employer, if aware that an employee has been rendered helpless, to provide medical assistance. That said, courts should not apply this rule so broadly as to require employers to provide *any and all* medical assistance to a helpless employee. Instead, a reasonableness standard must be read into this rule. For this reason, we clarify and restate the Russell emergency rule: an injury that is caused by an employer’s failure to provide **reasonable** medical assistance arises out of and in the course of employment when an employee becomes helpless at work because of an illness or other cause unrelated to her employment, the employee needs medical assistance to prevent further injury, the employer knows of the employee’s helplessness, and the employer can

provide **reasonable** medical assistance but does not do so.” (Emphasis added) The Court held that the employee’s claim did not arise out of her employment because the employer had provided reasonable assistance by calling for emergency personnel and had neither a statutory or common law duty to use its AED to assist the employee.

## **2. Burden of Medical Proof**

[\*Christopher Batey v. Deliver This, Inc., et al.\*, No. M2018-00419-SC-WCO-WC](#) – Filed January 29, 2019.

The employee sustained a back injury and filed a petition for benefit determination. The trial court determined the employee was entitled to 275 weeks of permanent partial disability benefits under T. C. A. § 50-6-242(a)(2). On appeal, the WCAB affirmed the trial court’s judgment, although it determined harmless errors were committed in defining an employee’s burden of proof under 242(a)(2) and in defining the phrase “employee’s pre-injury occupation” as used in 242(a)(2)(B). The employer appealed. In **affirming** the trial court’s judgment, the Supreme Court adopted the opinion of the WCAB. The WCAB agreed with the trial court’s determination that the employee was entitled to *extraordinary* relief up to 275 weeks in benefits based on the six criteria set forth in T. C. A. § 50-6-242(a). Medical proof indicated the employee’s permanent restrictions made him unable to perform his pre-injury occupation. Considering the burden of proof required with respect to proper certification by the ATP that the employee no longer has the ability to perform his pre-injury occupation, the WCAB held the statute does not require clear and convincing evidence, but requires a preponderance of the evidence. It does require clear and convincing evidence to find that limiting the employee’s recovery to increased benefits under T. C. A. § 50-6-207(3)(B) would be “inequitable in light of the totality of the circumstances.” The WCAB opinion also considered the definition of pre-injury occupation, indicating it must be given its plain and ordinary meaning, in that the phrase describes the type of work one does as his usual work. The WCAB held the burden of proof shifted to the employer to prove by clear and convincing evidence that the employee could return to his pre-injury occupation once the ATP issued his certification. In this case, the employer did not meet that burden.

[\*Stacy Clark v. Charms, L.L.C.\*, No. W2017-02552-SC-R3-WC](#) – Filed March 19, 2019.

The employee, who worked as a packer and box line operator, claimed she injured her back and left knee in a fall on May 22, 2013. She selected a physician from a panel provided by her employer. The ATP concluded she had sustained lumbar strain and a contusion to her left knee. In his deposition, the ATP indicated the employee did not report knee pain in her last two visits, but according to his records, she received physical therapy for her back and knee in August 2013. Subsequently, the employee was seen by a functional capacity specialist and a neurologist, neither of whom indicated a knee problem. On April 10, 2014, the employee

was seen by another physician, who recorded a history of left knee pain from a fall in a parking lot on May 22, 2013, and prescribed medication and physical therapy. The employee underwent a left knee arthroscopy on June 18, 2014. Another physician performed an independent medical evaluation of the employee and concluded she had sustained a permanent impairment as a result of the fall at work in May 2013, and the resulting injury to her left knee. The trial court found the employee had sustained a compensable injury to her left knee and awarded benefits. No award was made for her back. The employer appealed, arguing the employee had not established a compensable injury to her left knee. Since neither the initial panel physician nor the neurologist had made significant findings relative to the left knee, the employer maintained they had not found a causal connection to the May 22, 2013, fall. The employer also contended the employee should be *estopped* from seeking workers' compensation benefits for her knee injury since she had used group insurance and short term disability benefits to cover treatment for the knee. In **affirming** the trial court's judgment, the Panel found the employee had immediately reported an injury to her left knee, as well as her back, that the ATP recorded information about the knee, and prescribed therapy. After the employee told her employer she was having continuing problems with her knee, the employer told the employee further treatment would not be covered under workers' compensation. Only then did the employee access other resources for treatment. The Panel observed the trial court had determined the employee had no other option for treatment and was justified in having a non-authorized physician perform her knee surgery. The estoppel argument was rejected since the employer had not relied on any representations by the employee.

## **Medical Proof**

### **1. Psychological Injury**

[\*Natchez Trace Youth Academy et al. v. Christopher Tidwell, No. M2018-01311-SC-R3-WC\*](#) – Filed August 16, 2019.

The employee suffered facial injuries on June 28, 2013, during an altercation while restraining a resident. He filed a workers' compensation claim for physical and psychological injuries. The trial court determined the employee did not make a meaningful return to work and awarded benefits for physical and psychological injuries using a 4.85 multiplier. The employer appealed. The Panel **affirmed** the judgment of the trial court in awarding benefits beyond the 1.5 cap for the physical injuries and in its award of psychological injury benefits for depression and PTSD. The employer challenged the trial court's ruling that the employee had no meaningful return to work, arguing there were no physician-imposed restrictions that would have prevented a return and that the employee abandoned his position. However,

there was a work excuse document which indicated the employee should have a psychiatric evaluation and release before returning. This did not occur during the timeframe the employer imposed upon the employee for returning to work. The trial court had determined the employer had improperly terminated the employee when he had not been cleared to return by a psychiatrist and therefore he had no meaningful return. Proof of psychological injury was substantial, with the only dissenting view posed by the employer's retained psychiatrist, which the trial court found lacked credibility.

## **2. Panel Referral**

[\*Ronald Brantley v. Mike Brantley, et al.\*, No. E2018-01793-SC-R3-WC](#) – Filed November 6, 2019.

The employee sustained a crush injury to his left hand on March 13, 2008. The injury necessitated amputation of his small finger and insertion of pins by his ATP. A lump sum settlement was approved in March 2009. In June 2017, the employee returned to the ATP for the first time since he was discharged in September 2008, seeking narcotic pain medication for pain and numbness in his hand. The ATP opined his symptoms were unrelated to the previous injury and advised the employee he could do nothing further for him and that he would not prescribe pain medication. He later testified by deposition that he did not refer the employee for pain management, although the employee maintained he had received a referral from the physician's office. The employee then sought a panel of physicians for pain management, which the employer refused. The employee filed a motion to compel payment of benefits and, alternatively, for contempt. After a hearing, the trial court found the ATP did not make and did not intend to make a referral for pain management and denied the employee's motion. The employee appealed, contending the trial court erred in not compelling the employer to provide pain management. The Panel **affirmed** the judgment of the trial court, observing that the ATP had testified unequivocally that any pain the employee was experiencing was not attributable to the 2008 injury and there was no reason to refer him to pain management. Since no referral was made by the ATP, T. C. A. § 50-6-204(j)(2)(A) did not apply and the employer was not required to provide a panel for pain management.

## **3. Exposure**

[\*Joe Butler v. Tennessee Municipal League Risk Management Pool\*, No. E2017-01981-SC-R3-WC](#) – Filed January 16, 2019.

The employee was a 15-year employee of the water department. He began feeling ill and was hospitalized on February 22, 2013. He was diagnosed with invasive pulmonary aspergillosis, a fungal infection, and placed on numerous restrictions. He never returned to work for the

employer. The employee made a claim for workers' compensation benefits, contending his work had exposed him to the pulmonary fungus while digging a trench for a water line at the county landfill. He described the working conditions as dusty with dampness in the trench. The employer denied the employee had suffered an occupational disease and moved for summary judgment, which the trial court denied. Proof at trial established the employee also owned a small farm on which he raised cattle, harvested hay, and operated a small sawmill. Five coworkers testified they also became ill after working on the trench. Although none was diagnosed with the fungus, none were tested for it. Expert medical proof indicated the fungus exists "everywhere" where moisture is present, and that it can be found in soil, moldy hay, and decaying vegetative matter. One expert said in order to get invasive pulmonary aspergillosis, a person would have to have had a "massive exposure." Three experts presented opinions on behalf of the employee all concluding his exposure was most likely due to the trench work at the landfill. Two experts for the defendant opined his exposure was probably due to his farm work. The trial court found for the defendant and dismissed the employee's claim, holding he had not established causation by a preponderance of the evidence. On appeal, the Panel identified the key issue was the source of the exposure. The Panel **reversed** the trial court's finding and **remanded** for determination of benefits, concluding that absolute certainty is not required to establish causation, and that the experts were equivocal in their testimony as to causation. "Notably, the experts were equivocal in their respective opinions and often used the terms "could have" or "most likely" when indicating whether or not the exposure to aspergillus occurred at the landfill site. We must resolve any reasonable doubt in favor of employee," *Excel Polymers, LLC v. Broyles*, 302 S.W.3d 268, 275 (Tenn. 2009). The Panel found it "strangely coincidental" all of the men fell ill with similar symptoms after working at the landfill.

[\*Cheryl Lynn Williams v. SWC LLC d/b/a SecureWatch, No. E2018-00922-SC-R3-WC\*](#) – Filed September 20, 2019.

[Claim for mold exposure. See above under **Procedure**, 1. Statute of Limitations]

#### **4. Impairment**

[\*Deborah L. Bain v. UTI Integrated Logistics LLC, et al., No. W2018-00840-SC-WCM-WC\*](#) – Filed October 16, 2019.

The employee, a truck driver, sustained a compensable injury to her right shoulder and right wrist on August 10, 2010. She settled with her employer for 19.5% (or 1.5 times an impairment rating of 13%) permanent partial disability. After returning to work, she suffered an injury to her left shoulder on January 23, 2013. The trial court applied the 1.5 times cap, found she was not permanently and totally disabled, but rather had a 6% whole body impairment for the January 2013 injury. The Panel **affirmed** the judgment of the trial

court, concluding that the employee had a meaningful return to work and the 1.5 cap was correctly applied. The employee had voluntarily resigned her position on March 23, 2015. As a result she deprived the employer of the ability to accommodate her in a different position. The Panel found the trial court had correctly adopted the diagnostic-based impairment rating of the employee's treating physician instead of an evaluating physician's use of a range of motion loss.

## 5. **Increased Benefits**

[\*\*\*Salvador Sandoval v. Mark Williamson, et al., No. M2018-01148-SC-R3-WC\*\*\*](#) – Filed March 28, 2019.

The employee, an undocumented immigrant, was injured and the parties settled his claim for permanent partial disability (PPD) benefits. After failing to return to work at the end of the compensation period, he sought additional PPD benefits under T. C. A. § 50-6-207(3)(B) because he could not return to work as he was not eligible or authorized to work in the U. S. under federal immigration law. The employee challenged the constitutionality of T. C. A. §50-6-307(3)(F) which does not allow for additional benefits under (3)(B) for any employee not eligible or authorized to work in the U.S. The trial court determined it lacked jurisdiction to decide the issue, but denied the employee's request for increased benefits. On appeal, the employee argued (3)(F) is preempted by both field and conflict presumptions under the federal *Immigration Reform and Control Act of 1986* (IRCA), codified primarily in 8 U.S.C. §§ 1324a and 1324b. IRCA is intended to combat employment of illegal aliens through civil penalties on employers. The employee contended (3)(F) could not be used to deprive an undocumented worker of recourse to increased benefits under (3)(B) since federal law preempts the state statute. The Panel **affirmed** the decision of the trial court, holding (3)(B) is constitutional. The Panel reviewed its earlier opinion in *Martinez v. Lawhon*, No. M2015-00635-SC-R3-WC, 2016 WL 684087 (Tenn. Workers Comp. Panel 2016) where it found unconstitutional a similar statute, T. C. A. § 50-6-241(e)(2)(B)(ii) (2008), because of preemption by IRCA. The statute at issue in *Martinez* restricted benefits based on immigration status and penalized employers who knowingly hired undocumented workers. In *Martinez*, the Panel had determined the legislature had intended to establish what amounted to a state immigration policy. Since IRCA expressly prohibited civil penalties such as that imposed by the statute, it was preempted. Here, the Panel found that (3)(F) does not punish employers for hiring undocumented workers, nor does it reduce the permanent partial disability award to the employee. Thus, there was no *express* preemption. The Panel also determined there was no *field* or *conflict* presumption, ultimately finding all injured employees receive the same award regardless of immigration status; "however, only injured employees who are in the country legally can receive additional benefits."

[\*Kenneth M. Wright v. National Strategic Protective Services, LLC et al., No. E2018-01019-SC-R3-WC\*](#) – Filed May 23, 2019.

The employee, a security officer and 29-year veteran at the Department of Energy’s facilities at Oak Ridge, sustained a large cervical disc injury at C5-6 during a training exercise in September 2014, which required surgery. The trial court found he was entitled to increased PPD benefits under T. C. A. § 50-6-207(3)(B), and then awarded extraordinary benefits under T. C. A. § 50-6-242(a)(2). The employer appealed the extraordinary award. After surgery, the employee experienced continuing cervical symptomology and ultimately was medically disqualified from work by his employer. He did not try to return to any type of work thereafter. The main issue before the Panel was whether the employee was entitled to extraordinary relief. The Panel **affirmed** the trial court judgment, finding there was clear and convincing evidence that limiting the employee to benefits under (3)(B) was inequitable, and that the trial court had correctly made specific findings under § 50-6-242(a)(2), which are prerequisite to affording extraordinary relief.

#### **6. Future Medical**

[\*Darla McKnight v. Hubbell Power Systems, et al., No. M2019-00205-SC-R3-WC\*](#) – Filed December 19, 2019.

The employee filed a motion to require additional medical treatment for a work-related injury she had suffered in March 2007. The trial court granted the motion and denied the employer’s motion to appoint a neutral physician. On appeal, the Panel **affirmed** the trial court’s decision, agreeing that the medical evidence established a causal link between the work-related injury and the need for additional treatment. The employee’s treating physician had carefully established that the work injury triggered long standing symptoms from degenerative disc disease with disc protrusions and cervical radiculopathy that worsened over a ten-year period and ultimately necessitated surgical treatment.

#### **7. Permanent and Total Disability**

[\*Christopher Batey v. Deliver This, Inc., et al., No. M2018-00419-SC-WCO-WC\*](#) – Filed January 29, 2019.

[See above under **Compensability**, 2. Burden of Proof]

[\*Mohammad Hamad v. Real Time Staffing Services, LLC, et al.\*, No. M2017-02538-SC-R3-WC](#) – Filed January 30, 2019.]

In April 2011, the employee sustained a left meniscus injury in a fall at work. After knee surgery, he returned to work, but sustained a left shoulder injury and inguinal hernia in a lifting incident in September 2012. He did not return to work and filed suit, claiming permanent and total disability. The trial court found him only permanently and partially disabled. The Panel **affirmed** the trial court’s judgment, finding ample evidence to support the decision. The trial court had rejected the opinions of the employee’s personal physician and a vocational expert who had based his own opinions on that of the physician. None of the other medical experts had found the employee to be restricted from resuming employment. The Panel also agreed the trial court had determined the employee did not qualify for benefits under the “Escape Clause” (T. C. A. § 50-6-242 because he did not prove three of the four requirements by clear and convincing evidence.

[\*Venture Express v. Jerry Frazier\*. No. W2018-00344-SC-R3-WC](#) – Filed March 27, 2019.

The employee, a truck driver with heavy lifting duties, was injured on January 29, 2014, when his truck hit a pothole. The impact caused immediate shoulder and arm pain. His neurosurgeon performed a cervical discectomy January 19, 2015. His symptomology continued, and while the neurosurgeon did not assign permanent restrictions, he indicated the neck injury would likely interfere with the employee’s driving and other activities. Prior to his injury, the employee had driven up to eleven hours per day. After his surgery, the employee became depressed, did not return to work, and stopped almost all activities. He had suicidal thoughts and panic attacks. A mental IME established the depression and anxiety were permanent conditions. The trial court found him permanently and totally disabled, concluding that he was unable to perform his job as a truck driver based on his physical condition after the accident and subsequent treatment. The employer had argued the 1.5 times cap should apply. On appeal, the Panel **affirmed** the judgment, holding the trial court had correctly evaluated the physical limitations as well as the employee’s age, education, and job history.

[\*Ricky Armstrong v. Armstrong Hardwood Flooring Company\*. No. W2018-00427-SC-R3-WC](#) – Filed April 5, 2019.

The employee, a material handler, was hurt at work on February 25, 2014, when he was struck in the head by a falling pipe and knocked unconscious. He did not return to work after the accident and was laid off due to work force reduction in April 2014. His principal injury was left shoulder rotator cuff tear and adhesive capsulitis, for which he had surgeries in March and July 2015. In view of the employee’s post-injury lifting restrictions, COPD issues,

and cognitive limitations, a vocational expert determined he had virtually no transferable job skills. The trial court found the employee to be permanently and totally disabled. The Panel **affirmed**, having found causation uncontested and substantial support for the trial court's ruling.

[\*Duwan Duignan v. Stowers Machinery Corp., et al.\*, No. E2018-01120-SC-R3-WC](#) – Filed June 19, 2019.

The employee had worked as a warehouse associate or delivery driver for more than 37 years. He hurt his lower back on June 1, 2016, when he lifted a heavy box. After treatment, he and his employer could not agree on a job he could perform with his post-injury restrictions. The employee filed for benefit determination. The trial court found the employee to be permanently and totally disabled. The WCAB reversed, finding the employee had failed to establish he was unable to work at a job “that brings him an income by a preponderance of the evidence.” A dissenting member of the WCAB concluded the “meaningful return to work” concept does not apply to the determination of permanent total disability and that post-injury employment is only one factor to consider in the determination. The Panel agreed with the dissent, **reversed** the WCAB, and reinstated the trial court's judgment. The Panel noted it has declined to apply a meaningful return to work analysis in a case where the employee was permanently and totally disabled. *Gray v. Vision Hospitality Grp.*, No. M2016-00116-SC-R3-WC, 2107 WL 384430, at \*5 (Tenn. Workers' Comp. Panel Jan. 26, 2017). The meaningful return to work analysis addresses claims by employees who had become permanently and partially disabled by a work injury, returned to work for the pre-injury employer, and later left the employer. *Tryon v. Saturn Corp.*, 254 W.W.3d 321, 328 (Tenn. 2018).

[See also, [\*Michael McCloud v. Charter Communications, Inc.\*, No. W2018-02166-SC-R3-WC](#) – Filed October 24, 2019. Relative to proof of transferable job loss and significant restrictions on lifting and bending after two post-injury back surgeries.]

## **8. Second Injury Fund**

[\*Carol Nolan v. Goodyear Tire & Rubber Co., et al.\*, No. W2018-01382-SC-R3-WC](#) – Filed August 16, 2019.

The trial court found the employee permanently and totally disabled and apportioned 85% of the award to the employer and 15% to the Second Injury Fund. The employee suffered work-related injuries to her back and knees in April 2011. The employer appealed both the finding of permanent and total disability and apportionment. The Panel **affirmed** the judgment of the trial court. The employee had undergone both a spinal fusion and left knee

replacement after her April 2011 injuries. She had two surgical procedures following a right shoulder injury in September 2007 and had carpal tunnel surgical release for her right hand in 2009. She was not under work restrictions prior to her April 2011 injury. The evidence in trial indicated the employee had a history of physically demanding jobs and below average cognitive ability. She had worked without restrictions, accommodations, or medication prior to the April 2011 injuries, but since had needed pain management, and was unable to stand, sit, or walk for long periods of time and could not lift as before. With respect to apportionment, the Panel confirmed the Second Injury Fund is liable only for the portion of the award remaining after considering the extent of disability attributable to the subsequent injury. T. C. A. §50-6-208(a)(1); *Allen v. City of Gatlinburg*, 36 S.W.3d 73, 76 (Tenn. 2001).

#### **9. Presumption Afforded Authorized Treating Physician (Rebuttal)**

**[Bradley Harlow v. Love's Travel Stops & Country Stores, Inc., et al., No. E2018-01905-SC-R3-WC](#)** – Filed October 14, 2019.

The employee, a diesel mechanic, was hurt on August 26, 2013, while removing a tire-and-hub assembly from a truck. He experienced pain in his back, right shoulder, and right hip, and it worsened over the next several days. The employee sought help from primary care physicians, one of whom told him he had a herniated disc and an annular tear. He quit his job in February 2014, telling his supervisor he could not work because of back pain. He saw a panel physician in February 2015 and was told the disc and annular tear were unrelated to work injury. However, an independent medical examination (IME) in December 2016 concluded the employee had indeed sustained an annular tear and associated disc herniation as a result of the work injury. The trial court accredited the testimony of the IME physician rather than that of the ATP, and awarded permanent partial disability benefits based on a 52% rating, or four times the 13% impairment rating assigned by the IME physician. The Panel **affirmed** the trial court's judgment, observing that while the opinion of an authorized treating physician is presumed to be correct on the issue of causation, the presumption may be rebutted by a preponderance of the evidence. T. C. A. § 50-6-102(12)(A)(ii) (2014). "When medical testimony differs, the trier of fact must choose which expert is more credible. In making this determination, the trial court may consider, among other things, the experts' qualifications, the circumstances of their evaluations, the information available to them, and other experts' evaluation of the importance of that information." *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672,676 (Tenn. 1991). The Panel noted that the IME physician spent far more time with the employee, had significantly more information available to him, and took a detailed history that disclosed the twisting nature of the injury which he concluded produced the annular tear.

[For a similar result, see [\*Teresa Adams v. Rich Products Corporation, No. W2018-00288-SC-R3-WC\*](#) – Filed August 30, 2019. Where the employee successfully rebutted the presumed accuracy of the Medical Impairment Rating Registry (MIR) Program, whose physician found the employee suffered from inflammatory arthritis unrelated to her employment. An IME physician concluded the employee had sustained complex regional pain syndrome (CRPS) resulting from her original work injury, which involved carpal tunnel syndrome and resulting surgeries which rendered her hands almost non-functional.]

[And see *also* above under **Causation**, 1. Burden of Proof, [\*Roger Joiner v. United Parcel Service, Inc., et al. No. M2018-01876-SC-R3-WC\*](#) – Filed December 6, 2019.]

## CONCLUSION

Pursuant to Tennessee Code Annotated Section 50-6-121(i), the Advisory Council on Workers' Compensation respectfully submits this report on significant Supreme Court decisions for the 2019 Calendar Year up to and including the decision filed on December 19, 2019. An electronic copy of the report will be sent to the Governor and to the Speaker of the House of Representatives, the Speaker of the Senate, the Chair of the Consumer and Human Resources Committee of the House of Representatives, and the Chair of the Commerce and Labor Committee of the Senate. A printed copy of the report will not be mailed. Notice of the availability of this report will be provided to all members of the 111<sup>th</sup> General Assembly pursuant to T. C. A. § 3-1-114. In addition, the report will be posted under the Advisory Council on Workers' Compensation tab of the Tennessee Treasury Department website: <https://treasury.tn.gov/Explore-Your-TN-Treasury/About-the-Treasury/Boards-Commissions/Advisory-Council-on-Workers'-Compensation>

**Respectfully submitted on behalf of the Tennessee Advisory Council on Workers' Compensation,**

/s/ \_\_\_\_\_  
David H. Lillard, Jr., State Treasurer, Chair

/s/ \_\_\_\_\_  
Larry Scroggs, Administrator



AUGUST 2020

ACTUARIAL REPORT:  
BY-THE-NUMBERS ACTUARIAL  
CONSULTING, INC.

EXHIBIT 4

LARRY SCROGGS  
STATE OF TENNESSEE, TREASURY DEPARTMENT



Mary Jean King, FCAS, CERA, MAAA  
SVP & Consulting Actuary  
118 Warfield Road  
Cherry Hill, NJ 08034  
P:856.428.5961  
mking@bynac.com



# TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION

## ACTUARIAL REPORT

### Review of NCCI Loss Cost Filing Effective 3/1/20

10/8/19

By The Numbers  
Actuarial Consulting, Inc.

October 8, 2019

Mr. David H. Lillard, Jr., Tennessee State Treasurer  
Chairman, Advisory Council on Workers' Compensation  
Andrew Jackson Building, 15<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, TN 37243-0248

Dear Mr. Lillard:

Enclosed is the actuarial report prepared for the Tennessee Advisory Council on Workers' Compensation. This report contains our review of the National Council on Compensation Insurance, Inc. (NCCI) filing effective 3/1/20.

The estimates and analysis contained in this report are based on data provided by NCCI including the filing memorandum dated 8/27/19 and the answers to questions concerning the filing provided by NCCI. Any discrepancy in the completeness, interpretation, or accuracy of the information used may require a revision to this report.

If you have any questions, please contact us. It is a pleasure to be of service to the Advisory Council.

Sincerely,



Mary Jean King, FCAS, CERA, MAAA  
Senior Vice President and Consulting Actuary



Lisa Dennison, FCAS, MAAA  
President and Consulting Actuary

cc: Larry Scroggs, Administrator, Advisory Council on Workers' Compensation

**TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION**

**ACTUARIAL REPORT**

**TABLE OF CONTENTS**

PURPOSE..... 1  
FINDINGS..... 2  
OVERVIEW OF FILING..... 4  
    SUMMARY OF PROPOSED LOSS COST CHANGES ..... 4  
    OTHER PROPOSED CHANGES ..... 4  
    DATA ..... 5  
STATEWIDE INDICATION ANALYSIS ..... 6  
    OVERVIEW ..... 6  
    ANALYSIS OF METHODOLOGY..... 7  
    DEVELOPMENT ..... 9  
    TREND ..... 18  
    LOSS ADJUSTMENT EXPENSE ..... 33  
QUALIFICATIONS AND LIMITATIONS..... 35  
CONSULTATION..... 36

**APPENDICES**

BYNAC RECOMMENDATIONS..... 37  
CHANGES IN ESTIMATED ULTIMATE INCURRED LOSSES ..... 39

**TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION**

**ACTUARIAL REPORT**

**PURPOSE**

By the Numbers Actuarial Consulting, Inc. (BYNAC) has been retained by the Tennessee Advisory Council on Workers' Compensation (ACWC) to prepare this actuarial report to present a professional analysis of the National Council on Compensation Insurance, Inc. (NCCI) Tennessee Workers Compensation Voluntary Market Loss Costs and Rating Values and Assigned Risk Rates and Rating Values filing effective 3/1/20. The basis of the analysis is the NCCI filing memorandum dated 8/27/19 and additional information provided by NCCI in support of the filing. BYNAC did not audit the premium or loss data underlying the NCCI filing, nor did we verify the accuracy of NCCI's detail calculations. An analysis of the classifications changes and update to the USL&HW coverage percentage factor is beyond the scope of this report.

The following items will be addressed in this report:

- An analysis of NCCI's methodology in arriving at its calculation of the proposed change in loss costs and loss adjustment expense.
- An examination of the appropriateness of the methodology used by NCCI in its selection of estimates employed to arrive at ultimate loss cost for past and forecast periods.
- An analysis of NCCI's selection of trend and loss adjustment expense allowance.
- An analysis of the impact of the new handling of benefit changes that result from annual revisions in maximum and/or minimum weekly indemnity benefits.

## FINDINGS

Based on BYNAC's review of the NCCI filing, the proposed overall voluntary loss cost level change of -9.5% effective 3/1/20 has been reasonably calculated in accordance with actuarial standards of practice.

BYNAC reviewed paid and paid + case development and experience for policy years 2013 through 2015 in addition to the policy years underlying the filing of 2016 and 2017 in order to test the assumptions made by NCCI in selecting the data and development methods for review. Changes in estimated ultimate incurred losses based on both NCCI and BYNAC selected loss development factors are shown in Appendix B. The large decreases shown in this exhibit indicate more volatility than would normally be expected with this volume of data. It is BYNAC's opinion that this supports the need for a longer experience period for the filing indication.

BYNAC also reviewed the selection of trend. The NCCI selected trend factor is a change from 0.930 to 0.935 for indemnity and from 0.960 to 0.955 for medical. The indemnity cost per case adjusted to current wage level has increased 3.2% since the last period and medical cost per case has increased 7.1%. BYNAC selected factors are 0.940 for indemnity and 0.960 for medical.

BYNAC reviewed historical information for defense and cost containment expense (DCCE) and adjusting and other expense (AOE). BYNAC agrees with the NCCI proposed change to calculating DCCE based on Tennessee specific information. BYNAC's selection of 11.5% for DCCE is higher than the NCCI selection of 11.0%. BYNAC feels a longer experience period

average is appropriate due to the use of paid to paid DCCE ratios. The total LAE allowance recommendations are 19.0% for NCCI and 19.5% for BYNAC. The overall indication using BYNAC's experience and trend change and LAE selection is -5.4% (Appendix A). The BYNAC indication using the NCCI trend selection would be -7.8%.

## OVERVIEW OF FILING

### SUMMARY OF PROPOSED LOSS COST CHANGES

NCCI is proposing a decrease in loss costs based on premium and loss experience effective 3/1/20. The breakdown of the proposed changes by industry groups is as follows:

Industry Group	Loss Cost Change Eff 3/1/20
Manufacturing	-8.6%
Contracting	-11.2%
Office & Clerical	-7.9%
Goods & Services	-9.1%
Miscellaneous	-10.0%
Overall	-9.5%

### OTHER PROPOSED CHANGES

In addition to the loss cost changes, NCCI has included in the filing class code changes, an update to the retrospective rating plan parameters, a change to the handling of indemnity benefit changes, a change to the methodology for calculating the DCCE provision, a modification to the swing limit bound calculation, and an update to the USL&H coverage percentage factor. The calculations for the update to the retrospective rating plan parameters are not presented in the filing or technical supplement and have not been reviewed for this report. The modification to the swing limit bound calculation has no effect on the proposed loss costs but it is reasonable in BYNAC's opinion.

The statewide indication includes an increase of +0.1% to overall workers compensation system costs for the estimated impact of the medical fee schedule update that was effective 1/1/19.

BYNAC believes that these changes have been reasonably calculated in a manner similar to past filings.

## **DATA**

The data used for the statewide indication is premium and losses for policy years 2016 and 2017, evaluated as of 12/31/18. The policy years selected are the most recent available. Combined voluntary and assigned risk data are used. Assigned risk represents approximately 12.8% of the policy year 2016 market share and 12.2% of 2017. NCCI indicates that data for all carriers writing at least one-tenth of one percent of the Tennessee workers compensation written premium volume is included in the experience period data on which the filing is based with the exception of Guarantee Insurance Company which was excluded due to insolvency.

## STATEWIDE INDICATION ANALYSIS

### OVERVIEW

The statewide indicated change is based on premium and loss data for policy years 2016 and 2017. Standard earned premium is developed to ultimate to account for payroll audits that occur after the valuation date. Premium is then brought to the level of the current loss costs based on changes in loss costs since the experience period.

Two procedures are used to estimate the ultimate incurred losses. In the first method limited indemnity and medical paid losses plus case reserves are developed to ultimate. In the second method paid losses only are developed to ultimate. NCCI selected an average of the two methods as the best estimate of ultimate losses.

An on-level factor is also applied to losses to reflect changes to statutory benefit levels (excluding state average weekly wage (SAWW) related changes) since the experience period. A separate indemnity and medical limited cost ratio is calculated. A projected cost ratio for the proposed policy period is then calculated by applying factors for trend, to adjust the losses to an unlimited basis, and for proposed changes in benefit levels. The medical and indemnity cost ratios are added to arrive at a projected cost ratio for each policy year. The average of the projected cost ratio for the two policy years is selected by NCCI.

The final component of the proposed change is the change in loss adjustment expense. The indicated change based on experience, trend, and benefits is multiplied by the effect of the proposed change in loss based expenses to calculate the proposed overall change.

Indicated Change Based on Experience, Trend, and Benefits:

Policy Year	Projected Cost Ratio		
	Indemnity	Medical	Combined
2017	0.292	0.649	0.941
2016	0.275	0.604	0.879
Selected			0.910

Change in Loss Based Expenses:

	DCCE Ratio	AOE Ratio	LAE Ratio
Current	0.121	0.076	0.197
Proposed	0.110	0.080	0.190
Change			0.994
Overall Change			-9.5%

## ANALYSIS OF METHODOLOGY

The methodology used by NCCI to calculate the statewide indication is reasonable. Both paid and paid + case loss development are used in estimating ultimate losses. These are widely used and accepted methods. Inherent in the paid + case loss development technique is the assumption that there are no changes in reserving practices. The paid loss development method provides a check to this assumption. Paid loss development assumes that there are no changes in claims settlement practices.

The use of on-level factors to bring premium to the current loss cost level is also a generally accepted technique. The use of a Tennessee specific distribution of policy effective dates increases the accuracy of the on-level factor calculation. As a matter of simplicity, the most recent distribution is used for all policy years.

In selecting trend factors, NCCI examines claim frequency and severity separately, adjusts the severity to the current statutory benefit level (excluding SAWW related changes), and removes the impact of the growth in payroll over the experience period. NCCI then combines the historical frequency with the adjusted severity to produce loss ratio trend experience. Policy year loss ratio trend is used as the basis for the selection. The selection of trend factors involves a great deal of judgment and is subject to a wide range of opinion concerning the appropriate factor.

Five accident years of countrywide LAE data are presented as the basis for the LAE allowance. A change in methodology has led to using Tennessee specific DCCE information instead of applying a Tennessee relativity factor to countrywide DCCE data. BYNAC believes this is an improvement to the prior methodology since changes to the relativity factor in recent years have resulted in changes to the DCCE provision that were not indicated by the Tennessee specific data. Countrywide AOE is used.

The methodology to limit losses in the development and trend calculations and adjust the limited cost ratio to an unlimited basis is the same as that used in the prior filing. This methodology was implemented in 2004 to temper the impact of one large claim on the overall statewide indication. The loss limitation threshold is based on pure premium and changes from year to year. The threshold for this filing is a 6.3% decrease to \$6,968,613. The selected statewide excess ratio of 2.0% is higher than the ratio used in the prior filing of 1.3%.

A comparison of the adjustment factors in the current and prior filings is presented in the following table:

	Most Recent Policy Year			Older Policy Year		
	Eff 3/1/20	Eff 3/1/19	Eff 3/1/18	Eff 3/1/20	Eff 3/1/19	Eff 3/1/18
Premium Development Factor	1.009	1.008	1.007	1.000	1.000	1.000
Indemnity Paid Development Factor	2.280	2.258	2.354	1.436	1.450	1.488
Indemnity Limited Paid Tail Factor	1.007	1.006	1.008			
Indemnity Paid+Case Development Factor	1.210	1.240	1.276	1.098	1.111	1.124
Indemnity Limited Paid+Case Tail Factor	1.002	1.001	1.002			
Medical Paid Development Factor	1.953	2.033	2.141	1.605	1.650	1.748
Medical Limited Paid Tail Factor	1.146	1.152	1.154			
Medical Paid+Case Development Factor	1.153	1.248	1.335	1.175	1.249	1.313
Medical Limited Paid+Case Tail Factor	1.020	1.022	1.026			
Indemnity Trend (Annual)	0.935	0.930	0.945			
Medical Trend (Annual)	0.955	0.960	0.980			
Loss Adjustment Expense	0.190	0.197	0.197			
Excess Loss Loading Factor	1.020	1.013	1.011			

## DEVELOPMENT

The ultimate cost of claims incurred for a specific time period is usually not known until several years after the close of that period. Loss development factors project the additional cost expected on claims. The calculation and selection of development factors to be applied to paid + case indemnity losses are shown in Table 1, beginning with the age to age factors calculated using Tennessee's limited paid + case policy year losses excluding LAE. The historical and expected loss development patterns are graphically illustrated in Figure 1 by thick and thin lines, respectively. Paid indemnity development is shown in Table 2 and Figure 2. Medical development follows in Tables 3 and 4 and Figures 3 and 4. For both indemnity and medical losses, NCCI selected 5 year average factors for the paid + case development and 2 year averages for the paid development. The NCCI selections are reasonable. However, BYNAC believes that a 3 year paid average is preferable. The BYNAC paid + case indemnity factors are judgmentally selected based on 3 year and 5 year averages and also a 5 year mid average which is the average of the 5 most recent age to age factors excluding the high and the low. BYNAC

Table 1

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**INDEMNITY PAID + CASE DEVELOPMENT FACTORS**

**A. INDEMNITY PAID + CASE AGE TO AGE FACTORS**

Policy Year	1 - 2	2 - 3	3 - 4	4 - 5	5 - 6	6 - 7	7 - 8	8 - 9	9 - 10	10 - 11	11 - 12	12 - 13	13 - 14	14 - 15	15 - 16	16 - 17	17 - 18	18 - 19	19-Ult
1995																			1.000
1996																	1.000	0.998	
1997																1.002	0.999	1.000	
1998														1.000	0.998	0.999	1.000	1.001	
1999														1.000	1.000	1.000	1.000	1.000	
2000													1.001	1.002	0.999	1.000	1.000	0.999	
2001												1.001	1.000	1.000	1.002	0.999			
2002											1.000	0.999	0.999	1.000	1.000				
2003										1.000	1.001	1.001	1.002	1.000					
2004									1.002	1.000	1.002	1.005	1.000						
2005								1.005	1.001	1.001	1.002	1.001							
2006							1.001	1.000	1.001	1.001	1.001	1.001							
2007						1.009	1.004	0.996	0.999	0.999									
2008					1.004	1.005	1.002	0.998	1.001										
2009				1.013	1.010	1.006	1.005	1.006											
2010			1.025	1.012	1.004	1.002	1.006												
2011		1.049	1.025	1.006	1.002	1.008													
2012	1.154	1.068	1.016	1.011	1.001														
2013	1.103	1.053	1.008	1.005															
2014	1.063	1.034	1.017																
2015	1.101	1.035																	
2016	1.090																		
5 Yr Avg	1.102	1.048	1.018	1.009	1.004	1.006	1.004	1.001	1.001	1.000	1.001	1.001	1.000	1.000	1.000	1.000	1.000	1.000	
3 Yr Avg	1.085	1.041	1.014	1.007	1.002	1.005	1.004	1.000	1.000	1.000	1.001	1.002	1.000	1.000	1.000	1.000	1.000	1.000	
5 Yr Mid	1.098	1.046	1.019	1.010	1.003	1.006	1.004	1.001	1.001	1.000	1.001	1.001	1.000	1.000	1.000	1.000	1.000	1.000	
2 Yr Avg	1.096	1.035	1.013	1.008	1.002	1.005	1.006	1.002	1.000	1.000	1.001	1.003	1.001	1.000	1.001	1.000	1.000	1.000	
NCCI Prior	1.116	1.057	1.020	1.011	1.004	1.006	1.003	1.002	1.000	1.000	1.001	1.001	1.001	1.000	1.000	1.000	1.000	1.000	1.001
NCCI Sel	1.102	1.048	1.018	1.009	1.004	1.006	1.004	1.001	1.001	1.000	1.001	1.001	1.000	1.000	1.000	1.000	1.000	1.000	1.002
BYNAC Sel	1.095	1.045	1.017	1.009	1.003	1.006	1.004	1.001	1.001	1.000	1.001	1.001	1.000	1.000	1.000	1.000	1.000	1.000	1.002

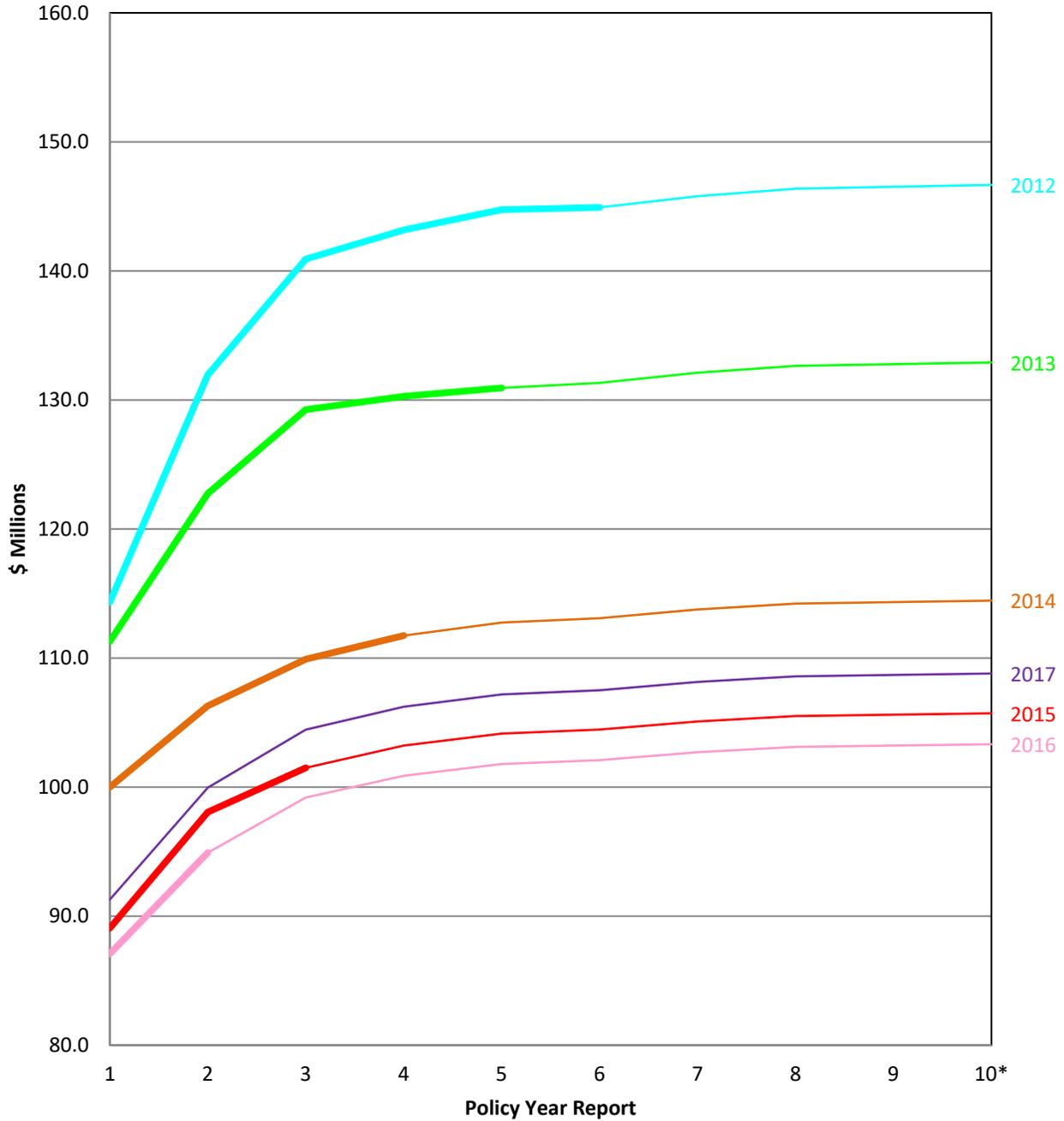
**B. INDEMNITY PAID + CASE DEVELOPMENT FACTORS**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	1.196	1.092	1.045	1.028	1.019	1.016	1.010	1.006	1.005	1.004	1.004	1.003	1.002	1.002	1.002	1.002	1.002	1.002	1.002

Figure 1

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**HISTORICAL AND EXPECTED DEVELOPMENT OF PAID + CASE LOSSES  
INDEMNITY**



\* Additional development of 0.4% is expected after 10th report.

Table 2

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**INDEMNITY PAID DEVELOPMENT FACTORS**

**A. INDEMNITY PAID AGE TO AGE FACTORS**

Policy Year	1 - 2	2 - 3	3 - 4	4 - 5	5 - 6	6 - 7	7 - 8	8 - 9	9 - 10	10 - 11	11 - 12	12 - 13	13 - 14	14 - 15	15 - 16	16 - 17	17 - 18	18 - 19	19-Ult
1995																			1.001
1996																	1.001	1.001	
1997																1.001	1.001	1.001	
1998															1.001	1.000	1.000	1.000	
1999														1.001	1.001	1.000	1.000	1.000	
2000													1.000	1.001	1.001	1.001	1.001	1.001	
2001												1.001	1.001	1.001	1.001	1.001	1.001	1.001	
2002											1.000	1.003	0.999	1.000	1.000				
2003										1.001	1.001	1.001	1.000	1.000					
2004									1.005	1.003	1.004	1.003	1.001						
2005								1.008	1.004	1.002	1.003	1.003							
2006							1.008	1.004	1.003	1.003	1.000								
2007						1.014	1.011	1.003	1.003	1.002									
2008					1.026	1.013	1.009	1.006	1.006										
2009				1.048	1.025	1.016	1.010	1.003											
2010			1.080	1.038	1.019	1.017	1.006												
2011		1.219	1.104	1.043	1.024	1.021													
2012	1.741	1.215	1.081	1.043	1.027														
2013	1.640	1.216	1.078	1.037															
2014	1.529	1.170	1.085																
2015	1.584	1.185																	
2016	1.591																		
5 Yr Avg	1.617	1.201	1.086	1.042	1.024	1.016	1.009	1.005	1.004	1.002	1.002	1.002	1.000	1.001	1.001	1.001	1.001	1.001	1.001
3 Yr Avg	1.568	1.190	1.081	1.041	1.023	1.018	1.008	1.004	1.004	1.002	1.002	1.002	1.000	1.000	1.001	1.001	1.000	1.000	1.000
5 Yr Mid	1.605	1.205	1.082	1.041	1.025	1.016	1.009	1.004	1.004	1.002	1.001	1.002	1.000	1.001	1.001	1.001	1.001	1.001	1.001
2 Yr Avg	1.588	1.178	1.082	1.040	1.026	1.019	1.008	1.005	1.005	1.003	1.002	1.003	1.001	1.000	1.001	1.001	1.001	1.001	1.000
NCCI Prior	1.557	1.194	1.080	1.043	1.022	1.017	1.010	1.005	1.003	1.003	1.004	1.002	1.000	1.001	1.001	1.001	1.000	1.001	1.006
NCCI Sel	1.588	1.178	1.082	1.040	1.026	1.019	1.008	1.005	1.005	1.003	1.002	1.003	1.001	1.000	1.001	1.001	1.001	1.000	1.007
BYNAC Sel	1.568	1.190	1.081	1.041	1.023	1.018	1.008	1.004	1.004	1.002	1.002	1.002	1.000	1.000	1.001	1.001	1.000	1.000	1.007

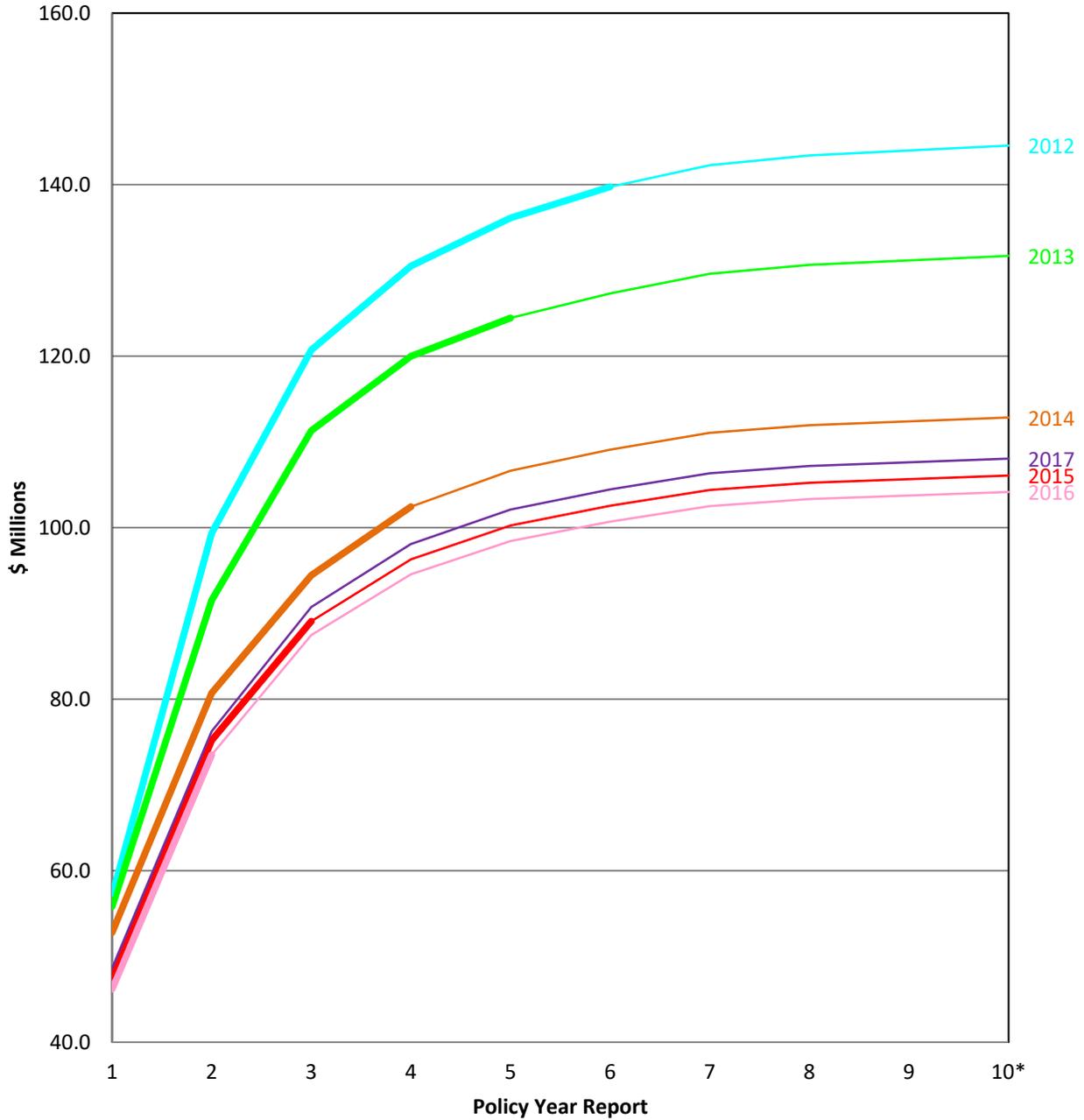
**B. INDEMNITY PAID DEVELOPMENT FACTORS**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	2.256	1.439	1.209	1.118	1.074	1.050	1.031	1.023	1.019	1.015	1.013	1.011	1.009	1.009	1.009	1.008	1.007	1.007	1.007

Figure 2

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**HISTORICAL AND EXPECTED DEVELOPMENT OF PAID LOSSES  
INDEMNITY**



\* Additional development of 1.5% is expected after 10th report.

Table 3

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**MEDICAL PAID + CASE DEVELOPMENT FACTORS**

**A. MEDICAL PAID + CASE AGE TO AGE FACTORS**

Policy Year	1 - 2	2 - 3	3 - 4	4 - 5	5 - 6	6 - 7	7 - 8	8 - 9	9 - 10	10 - 11	11 - 12	12 - 13	13 - 14	14 - 15	15 - 16	16 - 17	17 - 18	18 - 19	19 - Ult
1995																			1.006
1996																	0.995	0.992	
1997																1.001	0.993	1.006	
1998															1.001	1.006	0.997	1.002	
1999														1.007	1.003	1.005	0.996	0.997	
2000													1.015	1.000	0.997	0.989	1.002		
2001												1.017	1.013	1.006	0.996	0.991			
2002											0.995	1.007	1.002	0.994	1.003				
2003										1.011	1.023	1.002	1.006	0.999					
2004									1.017	1.008	1.001	1.000	1.002						
2005								1.034	1.022	1.000	1.004	1.003							
2006							1.034	1.000	1.012	1.000	0.999								
2007						1.040	1.024	1.023	0.981	0.991									
2008					1.059	1.029	0.989	0.996	0.997										
2009				1.031	1.013	1.014	0.999	1.007											
2010			1.060	1.023	1.018	1.013	0.996												
2011		1.043	1.037	1.000	1.013	1.001													
2012	1.030	1.027	1.017	1.012	1.002														
2013	0.955	1.029	1.018	0.995															
2014	0.986	1.016	1.015																
2015	0.987	0.985																	
2016	0.949																		
5 Yr Avg	0.981	1.020	1.029	1.012	1.021	1.019	1.008	1.012	1.006	1.002	1.004	1.006	1.008	1.001	1.000	0.998	0.997	1.001	
3 Yr Avg	0.974	1.010	1.017	1.002	1.011	1.009	0.995	1.009	0.997	0.996	1.001	1.002	1.003	1.000	0.999	0.995	0.998	1.002	
5 Yr Mid	0.976	1.024	1.024	1.012	1.015	1.019	1.006	1.010	1.009	1.002	1.001	1.004	1.007	1.002	1.000	0.999	0.996	1.002	
2 Yr Avg	0.968	1.001	1.017	1.004	1.008	1.007	0.998	1.002	0.989	0.995	1.002	1.002	1.004	0.997	1.000	0.990	0.999	1.000	
NCCI Prior	0.999	1.038	1.035	1.021	1.028	1.025	1.013	1.014	1.005	1.001	1.003	1.007	1.008	1.003	1.001	1.000	0.997	1.004	1.022
NCCI Sel	0.981	1.020	1.029	1.012	1.021	1.019	1.008	1.012	1.006	1.002	1.004	1.006	1.008	1.001	1.000	0.998	0.997	1.001	1.020
BYNAC Sel	0.981	1.020	1.029	1.012	1.021	1.019	1.008	1.012	1.006	1.002	1.004	1.006	1.008	1.001	1.000	0.998	0.997	1.001	1.020

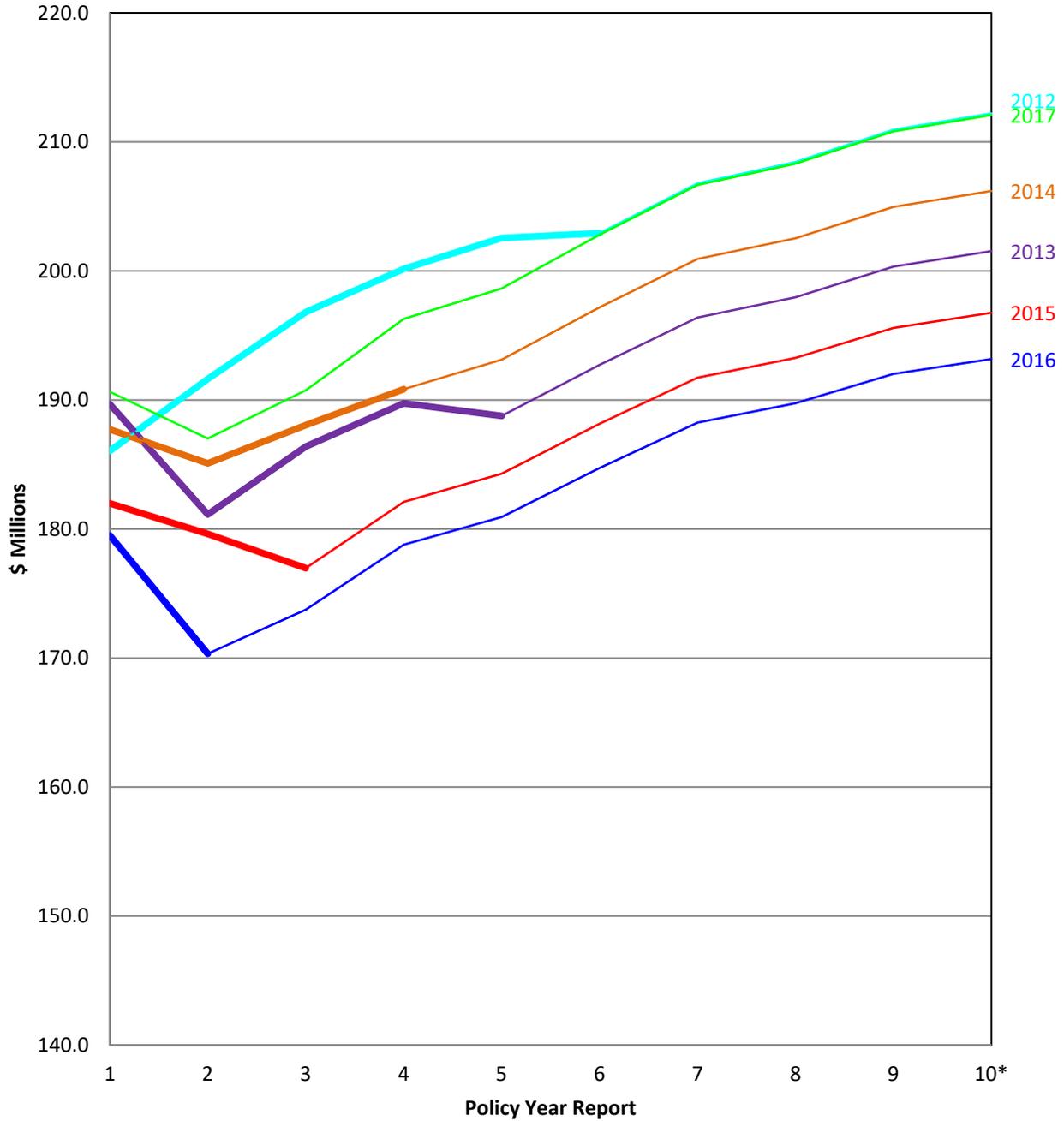
**B. MEDICAL PAID + CASE DEVELOPMENT FACTORS**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1.153	1.175	1.152	1.120	1.107	1.084	1.064	1.056	1.043	1.037	1.035	1.031	1.025	1.017	1.016	1.016	1.018	1.021	1.020

Figure 3

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**HISTORICAL AND EXPECTED DEVELOPMENT OF PAID + CASE LOSSES  
MEDICAL**



\* Additional development of 3.7% is expected after 10th report.

Table 4

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**MEDICAL PAID DEVELOPMENT FACTORS**

**A. MEDICAL AGE TO AGE FACTORS**

Policy Year	1 - 2	2 - 3	3 - 4	4 - 5	5 - 6	6 - 7	7 - 8	8 - 9	9 - 10	10 - 11	11 - 12	12 - 13	13 - 14	14 - 15	15 - 16	16 - 17	17 - 18	18 - 19	19 - Ult
1995																			1.012
1996																		1.007	1.018
1997																1.015	1.010	1.009	
1998															1.012	1.013	1.010	1.009	
1999														1.012	1.009	1.011	1.008	1.009	
2000													1.020	1.011	1.008	1.008	1.010		
2001												1.016	1.010	1.009	1.011	1.006			
2002											1.019	1.021	1.005	1.006	1.009				
2003										1.020	1.014	1.017	1.011	1.011					
2004									1.018	1.021	1.016	1.010	1.013						
2005								1.033	1.023	1.024	1.017	1.010							
2006							1.032	1.033	1.021	1.024	1.020								
2007						1.046	1.041	1.023	1.019	1.014									
2008					1.032	1.044	1.027	1.016	1.015										
2009				1.039	1.037	1.028	1.024	1.019											
2010			1.052	1.036	1.035	1.029	1.023												
2011		1.065	1.047	1.027	1.019	1.024													
2012	1.236	1.070	1.037	1.025	1.021														
2013	1.221	1.073	1.037	1.028															
2014	1.229	1.066	1.044																
2015	1.234	1.061																	
2016	1.200																		
5 Yr Avg	1.224	1.067	1.043	1.031	1.029	1.034	1.029	1.025	1.019	1.021	1.017	1.015	1.012	1.010	1.010	1.011	1.009	1.011	
3 Yr Avg	1.221	1.067	1.039	1.027	1.025	1.027	1.025	1.019	1.018	1.021	1.018	1.012	1.010	1.009	1.009	1.008	1.009	1.009	
5 Yr Mid	1.228	1.067	1.043	1.030	1.029	1.034	1.028	1.025	1.019	1.022	1.017	1.014	1.011	1.010	1.010	1.011	1.009	1.010	
2 Yr Avg	1.217	1.064	1.041	1.027	1.020	1.027	1.024	1.018	1.017	1.019	1.019	1.010	1.012	1.009	1.010	1.007	1.009	1.009	
NCCI Prior	1.232	1.070	1.037	1.026	1.027	1.029	1.026	1.020	1.020	1.024	1.017	1.014	1.008	1.008	1.010	1.010	1.009	1.009	1.152
NCCI Sel	1.217	1.064	1.041	1.027	1.020	1.027	1.024	1.018	1.017	1.019	1.019	1.010	1.012	1.009	1.010	1.007	1.009	1.009	1.146
BYNAC Sel	1.221	1.067	1.039	1.027	1.025	1.027	1.025	1.019	1.018	1.021	1.018	1.012	1.010	1.009	1.009	1.008	1.009	1.009	1.146

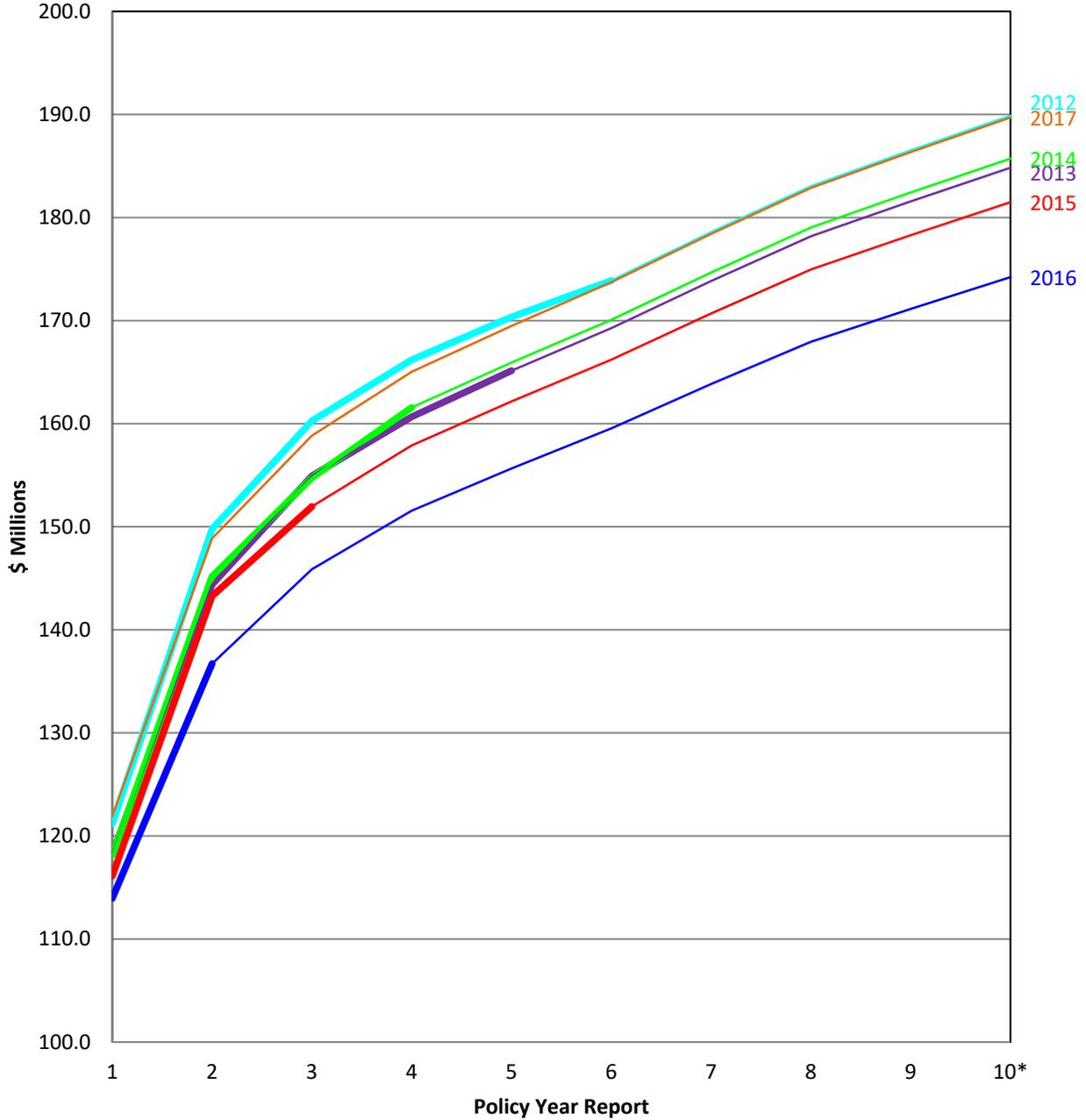
**B. MEDICAL PAID LOSS DEVELOPMENT FACTORS**

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	1.980	1.622	1.520	1.463	1.425	1.390	1.353	1.320	1.295	1.272	1.246	1.224	1.209	1.197	1.186	1.175	1.166	1.156	1.146

Figure 4

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**HISTORICAL AND EXPECTED DEVELOPMENT OF PAID LOSSES  
MEDICAL**



\* Additional development of 27.2% is expected after 10th report.

paid + case medical selections are 5 year averages which equal the NCCI selections. The selections are also shown on Tables 1 through 4.

The standard earned premium also needs to be developed to ultimate to account for changes to earned premium such as payroll audits that are completed after the 1st report. Table 5 shows the premium development with the NCCI and BYNAC selections. Age to age factors from prior filings are shown for the older policy periods. These factors are included to illustrate the range of usual factors.

Table 6 shows both NCCI's and BYNAC's estimated ultimate losses and standard earned premium. For the losses, the NCCI selections are based on an average of the indicated ultimate losses using the paid + case and paid development methods. The BYNAC selections are also based on the average of the two methods using BYNAC's selected development factors. The selections are illustrated in Figures 5 and 6.

The indicated loss cost level change for policy years 2013 through 2017 is presented in Table 7. A summary of the indications is provided in Table 8 and Figure 7. BYNAC selected the average of the 2014 through 2017 BYNAC indications. BYNAC has extended the number of years used in the selected average due to the volatility.

## **TREND**

An exponential regression model is used to project the trend and is presented in Table 9. Both BYNAC and NCCI made judgmental selections based on the frequency, severity, and loss ratio trends presented. BYNAC believes that the use of a longer experience period in the trend

Table 5

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**PREMIUM DEVELOPMENT FACTORS**

A. PREMIUM AGE TO AGE FACTORS

Policy Year	1 - 2	2 - 3	3 - 4	4 - 5	5-Ult
2009	1.001	0.996	1.000	1.000	
2010	1.008	1.000	1.000	1.000	
2011	1.014	1.000	1.000	1.000	
2012	1.006	0.999	1.000	1.000	
2013	1.005	1.000	1.000	1.000	
2014	1.011	1.000	1.000		
2015	1.008	0.999			
2016	1.008				
5 Yr Avg	1.008	1.000	1.000	1.000	
3 Yr Avg	1.009	1.000	1.000	1.000	
5 Yr Mid	1.007	1.000	1.000	1.000	
2 Yr Avg	1.008	1.000	1.000	1.000	
NCCI Prior	1.008	1.000	1.000	1.000	1.000
NCCI Sel	1.009	1.000	1.000	1.000	1.000
BYNAC Sel	1.008	1.000	1.000	1.000	1.000

B. PREMIUM LOSS DEVELOPMENT FACTORS

1	2	3	4	5
1.008	1.000	1.000	1.000	1.000

Table 6

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF PREMIUM AND LOSSES DEVELOPED TO ULTIMATE REPORT**

<b>Section A - Policy Year 2017 Experience</b>		<b>NCCI</b>	<b>BYNAC</b>
(1)	Standard Earned Premium	\$564,857,887	\$564,857,887
(2)	Factor to Develop Premium to Ultimate	1.009	1.008
(3)	Standard Earned Premium Developed to Ultimate = (1)x(2)	\$569,941,608	\$569,376,750
(4)	Limited Indemnity Paid Losses	\$48,631,154	\$48,631,154
(5)	Limited Indemnity Paid Development Factor to Ultimate	2.280	2.256
(6)	Limited Indemnity Paid Losses Developed to Ultimate = (4)x(5)	\$110,879,031	\$109,711,883
(7)	Limited Indemnity Paid+Case Losses	\$91,283,776	\$91,283,776
(8)	Limited Indemnity Paid+Case Development Factor to Ultimate	1.210	1.196
(9)	Limited Indemnity Paid+Case Losses Developed to Ultimate = (7)x(8)	\$110,453,369	\$109,175,396
(10)	Policy Year 2017 Limited Indemnity Losses Developed to Ultimate NCCI and BYNAC = [(6)+(9)]/2	\$110,666,200	\$109,443,640
(11)	Limited Medical Paid Losses	\$121,918,213	\$121,918,213
(12)	Limited Medical Paid Development Factor to Ultimate	1.953	1.980
(13)	Limited Medical Paid Losses Developed to Ultimate = (11)x(12)	\$238,106,270	\$241,398,062
(14)	Limited Medical Paid+Case Losses	\$190,633,024	\$190,633,024
(15)	Limited Medical Paid+Case Development Factor to Ultimate	1.153	1.153
(16)	Limited Medical Paid+Case Losses Developed to Ultimate = (14)x(15)	\$219,799,877	\$219,799,877
(17)	Policy Year 2017 Limited Medical Losses Developed to Ultimate NCCI and BYNAC = [(13)+(16)]/2	\$228,953,074	\$230,598,970
<b>Section B - Policy Year 2016 Experience</b>		<b>NCCI</b>	<b>BYNAC</b>
(1)	Standard Earned Premium	\$605,728,962	\$605,728,962
(2)	Factor to Develop Premium to Ultimate	1.000	1.000
(3)	Standard Earned Premium Developed to Ultimate = (1)x(2)	\$605,728,962	\$605,728,962
(4)	Limited Indemnity Paid Losses	\$73,509,565	\$73,509,565
(5)	Limited Indemnity Paid Development Factor to Ultimate	1.436	1.439
(6)	Limited Indemnity Paid Losses Developed to Ultimate = (4)x(5)	\$105,559,735	\$105,780,264
(7)	Limited Indemnity Paid+Case Losses	\$94,920,977	\$94,920,977
(8)	Limited Indemnity Paid+Case Development Factor to Ultimate	1.098	1.092
(9)	Limited Indemnity Paid+Case Losses Developed to Ultimate = (7)x(8)	\$104,223,233	\$103,653,707
(10)	Policy Year 2016 Limited Indemnity Losses Developed to Ultimate NCCI and BYNAC = [(6)+(9)]/2	\$104,891,484	\$104,716,986
(11)	Limited Medical Paid Losses	\$136,709,967	\$136,709,967
(12)	Limited Medical Paid Development Factor to Ultimate	1.605	1.622
(13)	Limited Medical Paid Losses Developed to Ultimate = (11)x(12)	\$219,419,497	\$221,743,566
(14)	Limited Medical Paid+Case Losses	\$170,340,690	\$170,340,690
(15)	Limited Medical Paid+Case Development Factor to Ultimate	1.175	1.175
(16)	Limited Medical Paid+Case Losses Developed to Ultimate = (14)x(15)	\$200,150,311	\$200,150,311
(17)	Policy Year 2016 Limited Medical Losses Developed to Ultimate NCCI and BYNAC = [(13)+(16)]/2	\$209,784,904	\$210,946,939

Table 6

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF PREMIUM AND LOSSES DEVELOPED TO ULTIMATE REPORT**

<b>Section C - Policy Year 2015 Experience</b>		<b>NCCI</b>	<b>BYNAC</b>
(1)	Standard Earned Premium	\$583,795,525	\$583,795,525
(2)	Factor to Develop Premium to Ultimate	1.000	1.000
(3)	Standard Earned Premium Developed to Ultimate = (1)x(2)	\$583,795,525	\$583,795,525
(4)	Limited Indemnity Paid Losses	\$89,086,106	\$89,086,106
(5)	Limited Indemnity Paid Development Factor to Ultimate	1.219	1.209
(6)	Limited Indemnity Paid Losses Developed to Ultimate = (4)x(5)	\$108,595,963	\$107,705,102
(7)	Limited Indemnity Paid+Case Losses	\$101,492,979	\$101,492,979
(8)	Limited Indemnity Paid+Case Development Factor to Ultimate	1.048	1.045
(9)	Limited Indemnity Paid+Case Losses Developed to Ultimate = (7)x(8)	\$106,364,642	\$106,060,163
(10)	Policy Year 2015 Limited Indemnity Losses Developed to Ultimate NCCI and BYNAC = [(6)+(9)]/2	\$107,480,303	\$106,882,633
(11)	Limited Medical Paid Losses	\$151,961,963	\$151,961,963
(12)	Limited Medical Paid Development Factor to Ultimate	1.508	1.520
(13)	Limited Medical Paid Losses Developed to Ultimate = (11)x(12)	\$229,158,640	\$230,982,184
(14)	Limited Medical Paid+Case Losses	\$176,970,551	\$176,970,551
(15)	Limited Medical Paid+Case Development Factor to Ultimate	1.152	1.152
(16)	Limited Medical Paid+Case Losses Developed to Ultimate = (14)x(15)	\$203,870,075	\$203,870,075
(17)	Policy Year 2015 Limited Medical Losses Developed to Ultimate NCCI and BYNAC = [(13)+(16)]/2	\$216,514,358	\$217,426,130
<b>Section D - Policy Year 2014 Experience</b>		<b>NCCI</b>	<b>BYNAC</b>
(1)	Standard Earned Premium	\$595,433,763	\$595,433,763
(2)	Factor to Develop Premium to Ultimate	1.000	1.000
(3)	Standard Earned Premium Developed to Ultimate = (1)x(2)	\$595,433,763	\$595,433,763
(4)	Limited Indemnity Paid Losses	\$102,444,269	\$102,444,269
(5)	Limited Indemnity Paid Development Factor to Ultimate	1.127	1.118
(6)	Limited Indemnity Paid Losses Developed to Ultimate = (4)x(5)	\$115,454,691	\$114,532,693
(7)	Limited Indemnity Paid+Case Losses	\$111,744,607	\$111,744,607
(8)	Limited Indemnity Paid+Case Development Factor to Ultimate	1.029	1.028
(9)	Limited Indemnity Paid+Case Losses Developed to Ultimate = (7)x(8)	\$114,985,201	\$114,873,456
(10)	Policy Year 2014 Limited Indemnity Losses Developed to Ultimate NCCI and BYNAC = [(6)+(9)]/2	\$115,219,946	\$114,703,075
(11)	Limited Medical Paid Losses	\$161,564,307	\$161,564,307
(12)	Limited Medical Paid Development Factor to Ultimate	1.449	1.463
(13)	Limited Medical Paid Losses Developed to Ultimate = (11)x(12)	\$234,106,681	\$236,368,581
(14)	Limited Medical Paid+Case Losses	\$190,836,312	\$190,836,312
(15)	Limited Medical Paid+Case Development Factor to Ultimate	1.120	1.120
(16)	Limited Medical Paid+Case Losses Developed to Ultimate = (14)x(15)	\$213,736,669	\$213,736,669
(17)	Policy Year 2014 Limited Medical Losses Developed to Ultimate NCCI and BYNAC = [(13)+(16)]/2	\$223,921,675	\$225,052,625

Table 6

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF PREMIUM AND LOSSES DEVELOPED TO ULTIMATE REPORT**

<b>Section E - Policy Year 2013 Experience</b>	<b>NCCI</b>	<b>BYNAC</b>
(1) Standard Earned Premium	\$611,835,283	\$611,835,283
(2) Factor to Develop Premium to Ultimate	1.000	1.000
(3) Standard Earned Premium Developed to Ultimate = (1)x(2)	\$611,835,283	\$611,835,283
(4) Limited Indemnity Paid Losses	\$124,452,780	\$124,452,780
(5) Limited Indemnity Paid Development Factor to Ultimate	1.084	1.074
(6) Limited Indemnity Paid Losses Developed to Ultimate = (4)x(5)	\$134,906,814	\$133,662,286
(7) Limited Indemnity Paid+Case Losses	\$130,935,041	\$130,935,041
(8) Limited Indemnity Paid+Case Development Factor to Ultimate	1.020	1.019
(9) Limited Indemnity Paid+Case Losses Developed to Ultimate = (7)x(8)	\$133,553,742	\$133,422,807
(10) Policy Year 2013 Limited Indemnity Losses Developed to Ultimate NCCI and BYNAC = [(6)+(9)]/2	\$134,230,278	\$133,542,547
(11) Limited Medical Paid Losses	\$165,137,755	\$165,137,755
(12) Limited Medical Paid Development Factor to Ultimate	1.411	1.425
(13) Limited Medical Paid Losses Developed to Ultimate = (11)x(12)	\$233,009,372	\$235,321,301
(14) Limited Medical Paid+Case Losses	\$188,763,946	\$188,763,946
(15) Limited Medical Paid+Case Development Factor to Ultimate	1.107	1.107
(16) Limited Medical Paid+Case Losses Developed to Ultimate = (14)x(15)	\$208,961,688	\$208,961,688
(17) Policy Year 2013 Limited Medical Losses Developed to Ultimate NCCI and BYNAC = [(13)+(16)]/2	\$220,985,530	\$222,141,495

Figure 5

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**SELECTED ESTIMATED ULTIMATE INCURRED LOSSES  
INDEMNITY**



Figure 6

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**SELECTED ESTIMATED ULTIMATE INCURRED LOSSES  
MEDICAL**

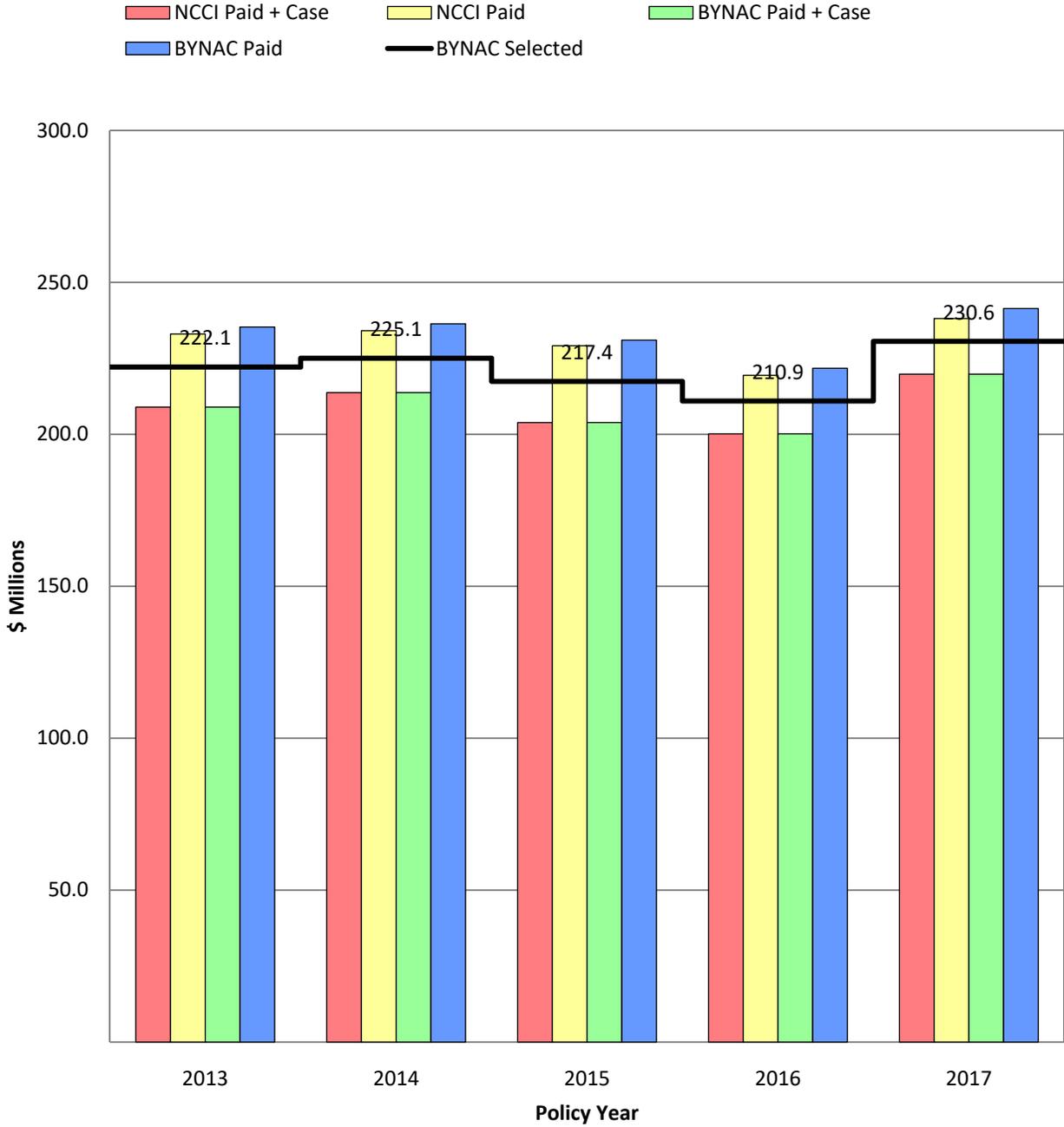


Table 7

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF INDICATED LOSS COST LEVEL CHANGE**

<b>Section A - Policy Year 2017 Experience</b>	<b><u>NCCI</u></b>	<b><u>BYNAC</u></b>
<b>Premium:</b>		
(1) Standard Earned Premium Developed to Ultimate (Table 6)	\$569,941,608	\$569,376,750
(2) Premium On-level Factor	0.547	0.547
(3) Premium Available for Benefit Costs = (1) x (2)	\$311,758,060	\$311,449,082
<b>Indemnity Benefit Cost:</b>		
(4) Limited Indemnity Losses Developed to Ultimate (Table 6)	\$110,666,200	\$109,443,640
(5) Indemnity Loss On-level Factor	1.000	1.000
(6) Adjusted Limited Indemnity Losses = (4) x (5)	\$110,666,200	\$109,443,640
(7) Adjusted Limited Indemnity Cost Ratio excluding Trend and Benefits = (6) / (3)	0.355	0.351
(8) Factor to Reflect Indemnity Trend	0.806	0.820
(9) Projected Limited Indemnity Cost Ratio = (7) x (8)	0.286	0.288
(10) Factor to Adjust Indemnity Cost Ratio to an Unlimited Basis	1.020	1.020
(11) Projected Indemnity Cost Ratio = (9) x (10)	0.292	0.294
(12) Factor to Reflect Proposed Changes in Indemnity Benefits	1.000	1.000
(13) Projected Indemnity Cost Ratio including Benefit Changes = (11) x (12)	0.292	0.294
<b>Medical Benefit Cost:</b>		
(14) Limited Medical Losses Developed to Ultimate (Table 6)	\$228,953,074	\$230,598,970
(15) Medical Loss On-level Factor	1.003	1.003
(16) Adjusted Limited Medical Losses = (14) x (15)	\$229,639,933	\$231,290,767
(17) Adjusted Limited Medical Cost Ratio excluding Trend and Benefits = (16) / (3)	0.737	0.743
(18) Factor to Reflect Medical Trend	0.862	0.877
(19) Projected Limited Medical Cost Ratio = (17) x (18)	0.635	0.651
(20) Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.020	1.020
(21) Projected Medical Cost Ratio = (19) x (20)	0.648	0.664
(22) Factor to Reflect Proposed Changes in Medical Benefits	1.002	1.002
(23) Projected Medical Cost Ratio including Benefit Changes = (21) x (22)	0.649	0.665
<b>Total Benefit Cost:</b>		
(24) Indicated Change Based on Experience, Trend and Benefits = (13) + (23)	0.941	0.959

Table 7

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF INDICATED LOSS COST LEVEL CHANGE**

<b>Section B - Policy Year 2016 Experience</b>	<b><u>NCCI</u></b>	<b><u>BYNAC</u></b>
<b>Premium:</b>		
(1) Standard Earned Premium Developed to Ultimate (Table 6)	\$605,728,962	\$605,728,962
(2) Premium On-level Factor	0.483	0.483
(3) Premium Available for Benefit Costs = (1) x (2)	\$292,567,089	\$292,567,089
<b>Indemnity Benefit Cost:</b>		
(4) Limited Indemnity Losses Developed to Ultimate (Table 6)	\$104,891,484	\$104,716,986
(5) Indemnity Loss On-level Factor	1.000	1.000
(6) Adjusted Limited Indemnity Losses = (4) x (5)	\$104,891,484	\$104,716,986
(7) Adjusted Limited Indemnity Cost Ratio excluding Trend and Benefits = (6) / (3)	0.359	0.358
(8) Factor to Reflect Indemnity Trend	0.753	0.770
(9) Projected Limited Indemnity Cost Ratio = (7) x (8)	0.270	0.276
(10) Factor to Adjust Indemnity Cost Ratio to an Unlimited Basis	1.020	1.020
(11) Projected Indemnity Cost Ratio = (9) x (10)	0.275	0.282
(12) Factor to Reflect Proposed Changes in Indemnity Benefits	1.000	1.000
(13) Projected Indemnity Cost Ratio including Benefit Changes = (11) x (12)	0.275	0.282
<b>Medical Benefit Cost:</b>		
(14) Limited Medical Losses Developed to Ultimate (Table 6)	\$209,784,904	\$210,946,939
(15) Medical Loss On-level Factor	1.000	1.000
(16) Adjusted Limited Medical Losses = (14) x (15)	\$209,784,904	\$210,946,939
(17) Adjusted Limited Medical Cost Ratio excluding Trend and Benefits = (16) / (3)	0.717	0.721
(18) Factor to Reflect Medical Trend	0.824	0.842
(19) Projected Limited Medical Cost Ratio = (17) x (18)	0.591	0.607
(20) Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.020	1.020
(21) Projected Medical Cost Ratio = (19) x (20)	0.603	0.619
(22) Factor to Reflect Proposed Changes in Medical Benefits	1.002	1.002
(23) Projected Medical Cost Ratio including Benefit Changes = (21) x (22)	0.604	0.620
<b>Total Benefit Cost:</b>		
(24) Indicated Change Based on Experience, Trend and Benefits = (13) + (23)	0.879	0.902

Table 7

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF INDICATED LOSS COST LEVEL CHANGE**

<b>Section C - Policy Year 2015 Experience</b>	<b><u>NCCI</u></b>	<b><u>BYNAC</u></b>
<b>Premium:</b>		
(1) Standard Earned Premium Developed to Ultimate (Table 6)	\$583,795,525	\$583,795,525
(2) Premium On-level Factor	0.466	0.466
(3) Premium Available for Benefit Costs = (1) x (2)	\$272,048,715	\$272,048,715
<b>Indemnity Benefit Cost:</b>		
(4) Limited Indemnity Losses Developed to Ultimate (Table 6)	\$107,480,303	\$106,882,633
(5) Indemnity Loss On-level Factor	1.000	1.000
(6) Adjusted Limited Indemnity Losses = (4) x (5)	\$107,480,303	\$106,882,633
(7) Adjusted Limited Indemnity Cost Ratio excluding Trend and Benefits = (6) / (3)	0.395	0.393
(8) Factor to Reflect Indemnity Trend	0.704	0.724
(9) Projected Limited Indemnity Cost Ratio = (7) x (8)	0.278	0.285
(10) Factor to Adjust Indemnity Cost Ratio to an Unlimited Basis	1.020	1.020
(11) Projected Indemnity Cost Ratio = (9) x (10)	0.284	0.291
(12) Factor to Reflect Proposed Changes in Indemnity Benefits	1.000	1.000
(13) Projected Indemnity Cost Ratio including Benefit Changes = (11) x (12)	0.284	0.291
<b>Medical Benefit Cost:</b>		
(14) Limited Medical Losses Developed to Ultimate (Table 6)	\$216,514,358	\$217,426,130
(15) Medical Loss On-level Factor	0.976	0.976
(16) Adjusted Limited Medical Losses = (14) x (15)	\$211,318,013	\$212,207,903
(17) Adjusted Limited Medical Cost Ratio excluding Trend and Benefits = (16) / (3)	0.777	0.780
(18) Factor to Reflect Medical Trend	0.786	0.808
(19) Projected Limited Medical Cost Ratio = (17) x (18)	0.611	0.630
(20) Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.020	1.020
(21) Projected Medical Cost Ratio = (19) x (20)	0.623	0.643
(22) Factor to Reflect Proposed Changes in Medical Benefits	1.002	1.002
(23) Projected Medical Cost Ratio including Benefit Changes = (21) x (22)	0.624	0.644
<b>Total Benefit Cost:</b>		
(24) Indicated Change Based on Experience, Trend and Benefits = (13) + (23)	0.908	0.935

Table 7

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF INDICATED LOSS COST LEVEL CHANGE**

<b>Section D - Policy Year 2014 Experience</b>	<b><u>NCCI</u></b>	<b><u>BYNAC</u></b>
<b>Premium:</b>		
(1) Standard Earned Premium Developed to Ultimate (Table 6)	\$595,433,763	\$595,433,763
(2) Premium On-level Factor	0.425	0.425
(3) Premium Available for Benefit Costs = (1) x (2)	\$253,059,349	\$253,059,349
<b>Indemnity Benefit Cost:</b>		
(4) Limited Indemnity Losses Developed to Ultimate (Table 6)	\$115,219,946	\$114,703,075
(5) Indemnity Loss On-level Factor	0.968	0.968
(6) Adjusted Limited Indemnity Losses = (4) x (5)	\$111,532,908	\$111,032,577
(7) Adjusted Limited Indemnity Cost Ratio excluding Trend and Benefits = (6) / (3)	0.441	0.439
(8) Factor to Reflect Indemnity Trend	0.658	0.681
(9) Projected Limited Indemnity Cost Ratio = (7) x (8)	0.290	0.299
(10) Factor to Adjust Indemnity Cost Ratio to an Unlimited Basis	1.020	1.020
(11) Projected Indemnity Cost Ratio = (9) x (10)	0.296	0.305
(12) Factor to Reflect Proposed Changes in Indemnity Benefits	1.000	1.000
(13) Projected Indemnity Cost Ratio including Benefit Changes = (11) x (12)	0.296	0.305
<b>Medical Benefit Cost:</b>		
(14) Limited Medical Losses Developed to Ultimate (Table 6)	\$223,921,675	\$225,052,625
(15) Medical Loss On-level Factor	0.978	0.978
(16) Adjusted Limited Medical Losses = (14) x (15)	\$218,995,398	\$220,101,467
(17) Adjusted Limited Medical Cost Ratio excluding Trend and Benefits = (16) / (3)	0.865	0.870
(18) Factor to Reflect Medical Trend	0.751	0.776
(19) Projected Limited Medical Cost Ratio = (17) x (18)	0.650	0.675
(20) Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.020	1.020
(21) Projected Medical Cost Ratio = (19) x (20)	0.663	0.689
(22) Factor to Reflect Proposed Changes in Medical Benefits	1.002	1.002
(23) Projected Medical Cost Ratio including Benefit Changes = (21) x (22)	0.664	0.690
<b>Total Benefit Cost:</b>		
(24) Indicated Change Based on Experience, Trend and Benefits = (13) + (23)	0.960	0.995

Table 7

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF INDICATED LOSS COST LEVEL CHANGE**

<b>Section E - Policy Year 2013 Experience</b>	<b><u>NCCI</u></b>	<b><u>BYNAC</u></b>
<b>Premium:</b>		
(1) Standard Earned Premium Developed to Ultimate (Table 6)	\$611,835,283	\$611,835,283
(2) Premium On-level Factor	0.384	0.384
(3) Premium Available for Benefit Costs = (1) x (2)	\$234,944,749	\$234,944,749
<b>Indemnity Benefit Cost:</b>		
(4) Limited Indemnity Losses Developed to Ultimate (Table 6)	\$134,230,278	\$133,542,547
(5) Indemnity Loss On-level Factor	0.846	0.846
(6) Adjusted Limited Indemnity Losses = (4) x (5)	\$113,558,815	\$112,976,995
(7) Adjusted Limited Indemnity Cost Ratio excluding Trend and Benefits = (6) / (3)	0.483	0.481
(8) Factor to Reflect Indemnity Trend	0.616	0.640
(9) Projected Limited Indemnity Cost Ratio = (7) x (8)	0.298	0.308
(10) Factor to Adjust Indemnity Cost Ratio to an Unlimited Basis	1.020	1.020
(11) Projected Indemnity Cost Ratio = (9) x (10)	0.304	0.314
(12) Factor to Reflect Proposed Changes in Indemnity Benefits	1.000	1.000
(13) Projected Indemnity Cost Ratio including Benefit Changes = (11) x (12)	0.304	0.314
<b>Medical Benefit Cost:</b>		
(14) Limited Medical Losses Developed to Ultimate (Table 6)	\$220,985,530	\$222,141,495
(15) Medical Loss On-level Factor	0.979	0.979
(16) Adjusted Limited Medical Losses = (14) x (15)	\$216,344,834	\$217,476,524
(17) Adjusted Limited Medical Cost Ratio excluding Trend and Benefits = (16) / (3)	0.921	0.926
(18) Factor to Reflect Medical Trend	0.717	0.745
(19) Projected Limited Medical Cost Ratio = (17) x (18)	0.660	0.690
(20) Factor to Adjust Medical Cost Ratio to an Unlimited Basis	1.020	1.020
(21) Projected Medical Cost Ratio = (19) x (20)	0.673	0.704
(22) Factor to Reflect Proposed Changes in Medical Benefits	1.002	1.002
(23) Projected Medical Cost Ratio including Benefit Changes = (21) x (22)	0.674	0.705
<b>Total Benefit Cost:</b>		
(24) Indicated Change Based on Experience, Trend and Benefits = (13) + (23)	0.978	1.019

Table 8

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**DETERMINATION OF INDICATED LOSS COST LEVEL CHANGE**

**Indicated Change Based on Experience, Trend, and Benefits**

Policy Year	NCCI	BYNAC
2013	0.978	1.019
2014	0.960	0.995
2015	0.908	0.935
2016	0.879	0.902
2017	0.941	0.959
NCCI Selected	0.910	
BYNAC Selected		0.948

**Application of the Premium Offset and Change in Loss-based Expenses**

Indicated Loss Cost Level Change	0.910	0.948
Effect of the Change In Loss-Based Expenses	0.994	0.998
Indicated Change Modified for Expense Change	0.905	0.946
Indicated Change as Percentage	-9.5%	-5.4%

Figure 7

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**PROJECTED COST RATIO INCLUDING BENEFIT CHANGES**

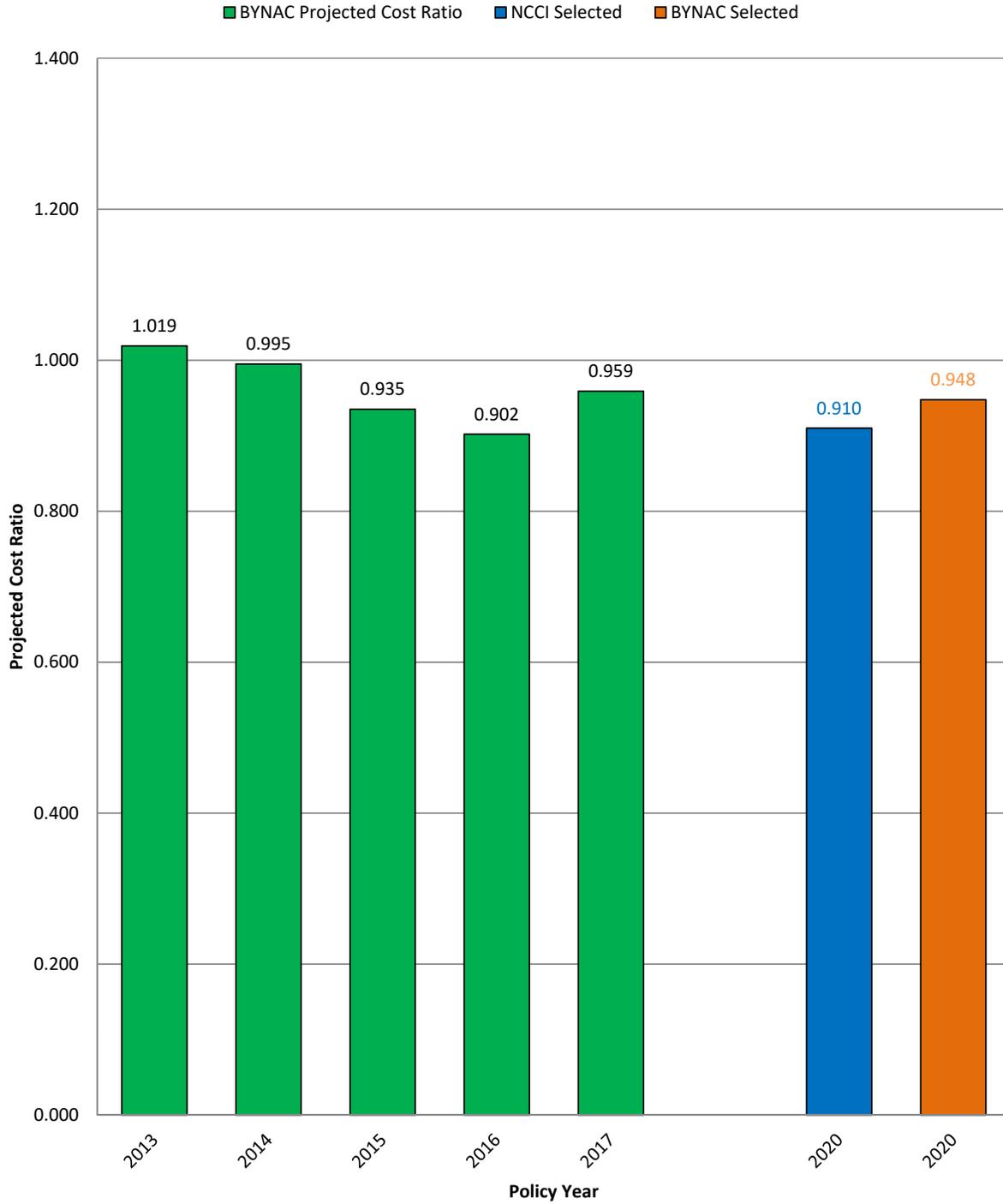


Table 9

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**TREND**

Policy Year	Lost-Time Claim Frequency	Indemnity		Medical	
		Avg Cost Per Case	Loss Ratio	Avg Cost Per Case	Loss Ratio
2003	36.153	22,279	0.805	34,067	1.232
2004	34.968	21,976	0.768	35,829	1.256
2005	33.851	21,153	0.714	35,878	1.212
2006	33.652	22,513	0.760	36,105	1.226
2007	33.091	21,570	0.718	37,607	1.250
2008	31.503	21,229	0.667	35,758	1.128
2009	32.912	20,564	0.677	36,679	1.207
2010	35.193	18,758	0.660	31,917	1.122
2011	31.530	18,275	0.576	30,210	0.952
2012	30.760	17,838	0.548	32,233	0.990
2013	28.235	17,131	0.483	32,627	0.921
2014	27.377	16,096	0.441	31,582	0.865
2015	24.871	15,880	0.395	31,227	0.777
2016	22.197	16,153	0.359	32,306	0.717
2017	21.289	16,674	0.355	34,600	0.737
5 year Exponential	-7.5%	-0.5%	-7.9%	1.4%	-6.1%
8 year Exponential	-6.8%	-2.2%	-8.8%	0.9%	-5.9%
15 year Exponential	-3.3%	-2.8%	-5.9%	-0.9%	-4.2%
NCCI Prior Selected			0.930		0.960
NCCI Selected			0.935		0.955
BYNAC Selected	-3.0%	-3.0%	0.940	-1.0%	0.960

selection is most appropriate. It provides more stability to the Tennessee loss costs and helps in separating changes due to trend from changes in experience due to risk. The ACWC may also consider how long this negative trend will persist into the future. While positive trend is unlimited, there are lower bounds on the negative trend indications. Another consideration this year is the effect of the statutory changes in indemnity benefits associated with the SAWW. NCCI is no longer calculating and adjusting for these changes separately. The presumption is that the decrease in projected loss cost associated with the removal of this adjustment factor will be offset by an increase in the indemnity trend. NCCI has indicated that the proposed change in selected indemnity trend of +0.5% is almost totally due to this change in methodology. While a high-level review of the indication using the prior methodology supports NCCI's assertion, going forward it will be more difficult to separate this effect when making the judgmental trend selection. BYNAC recommends factors of 0.940 for indemnity and 0.960 for medical. The NCCI recommendations are 0.935 for indemnity and 0.955 for medical.

## **LOSS ADJUSTMENT EXPENSE**

A summary of the LAE selections is shown in Table 10. The DCCE provision is based on Tennessee-specific policy year paid DCCE and losses. This is a change in methodology from prior filings. The paid DCCE to paid loss ratio is developed to ultimate using DCCE ratio development factors. AOE continues to be calculated using countrywide information since state specific data is not available. The NCCI selections are 11.0% for DCCE and 8.0% for AOE. BYNAC agrees with the AOE selection but recommends a selection of 11.5% for DCCE. This is based on the five year average.

Table 10

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**LOSS ADJUSTMENT EXPENSE**

<u>Year</u>	<u>NCCI Tennessee PY Developed DCCE Ratio</u>	<u>NCCI Countrywide AY Developed AOE Ratio</u>	<u>NCCI Accident Year Developed LAE Ratio</u>
2013	12.2%	6.9%	19.1%
2014	12.5%	7.2%	19.7%
2015	10.8%	7.7%	18.5%
2016	11.2%	8.1%	19.3%
2017	10.6%	7.9%	18.5%
5 Year Average	11.5%	7.6%	19.0%
3 Year Average	10.9%	7.9%	18.8%
NCCI Prior Selected	12.1%	7.6%	19.7%
NCCI Selected	11.0%	8.0%	19.0%
BYNAC Selected	11.5%	8.0%	19.5%
BYNAC Proposed Change in LAE Allowance			
Current Tennessee LAE Allowance			19.7%
BYNAC Proposed LAE Allowance			19.5%
Proposed Change in LAE			-0.2%

## QUALIFICATIONS AND LIMITATIONS

The estimates contained in this report depend upon the following:

- The actuarial assumptions, quantitative analysis, and professional judgment expressed in this report.
- The reliability of loss experience to serve as an indicator of future losses.
- The completeness and accuracy of data provided by NCCI.

Material changes in any of the assumptions or information upon which the findings are based will require a re-evaluation of the results of this report and a possible revision of those findings.

This report is intended for the use of the Tennessee Advisory Council on Workers'

Compensation. If the report is released to any third party, it should be released in its entirety.

Please advise BYNAC if this report is distributed to any other third party.

## CONSULTATION

The professional opinion given in this report is based on the judgment and experience of BYNAC. An analysis by another actuary may not arrive at the same conclusion. In the event that another actuary is consulted regarding the findings of this report, both actuaries should make themselves available for supplemental advice and consultation.

*TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION*

**APPENDIX A**

**BYNAC RECOMMENDATIONS**

Appendix A

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**INDICATED LOSS COST LEVEL CHANGE**

**Indicated Change Based on Experience, Trend, and Benefits:**

	Policy Year		<u>NCCI</u>	<u>BYNAC</u>
	<u>2017</u>	<u>2016</u>		
Projected Indemnity Cost Ratio including Benefit Changes	0.292	0.275		
Projected Medical Cost Ratio including Benefit Changes	<u>0.649</u>	<u>0.604</u>		
Total Benefit Cost	0.941	0.879		
Selected			0.910	0.948
<b>Change in Loss Based Expenses:</b>				
Current Tennessee LAE Allowance			19.7%	19.7%
Proposed Tennessee LAE Allowance			19.0%	19.5%
Selected			0.994	0.998
<b>Overall</b>			-9.5%	-5.4%

*TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION*

**APPENDIX B**

**CHANGES IN ESTIMATED ULTIMATE INCURRED LOSSES**

Appendix B

**STATE OF TENNESSEE  
WORKERS COMPENSATION**

**CHANGE IN ESTIMATED ULTIMATE INCURRED LOSSES**

A. NCCI Estimates

Policy Year	3/16 Filing to 3/17 Filing		3/17 Filing to 3/18 Filing		3/18 Filing to 3/19 Filing		3/19 Filing to 3/20 Filing		3/16 Filing to 3/20 Filing	
	Indemnity	Medical								
2010	-0.5%	-2.1%							-0.5%	-2.1%
2011	0.9%	-1.7%	-0.7%	-5.3%					0.2%	-7.0%
2012	-0.3%	-2.0%	-1.6%	-5.6%	0.1%	-5.2%			-1.8%	-12.2%
2013	-6.0%	-6.9%	-1.0%	-4.3%	-1.4%	-5.8%	-0.2%	-3.8%	-8.5%	-19.3%
2014			-9.4%	-6.5%	-3.9%	-6.4%	0.1%	-3.7%	-12.9%	-15.8%
2015					-3.3%	-6.3%	-1.4%	-6.0%	-4.6%	-11.9%
2016							-1.2%	-7.9%	-1.2%	-7.9%

B. BYNAC Estimates

Policy Year	3/16 Filing to 3/17 Filing		3/17 Filing to 3/18 Filing		3/18 Filing to 3/19 Filing		3/18 Filing to 3/19 Filing		3/16 Filing to 3/18 Filing	
	Indemnity	Medical								
2010	-0.3%	-2.0%							-0.3%	-2.0%
2011	0.9%	-1.8%	-0.5%	-3.3%					0.4%	-5.0%
2012	0.0%	-2.1%	-1.4%	-3.7%	-0.1%	-5.2%			-1.5%	-10.6%
2013	-4.4%	-8.8%	-1.6%	-3.2%	-1.5%	-5.9%	-0.4%	-3.7%	-7.6%	-20.0%
2014			-11.4%	-7.1%	-3.5%	-6.4%	-0.3%	-3.5%	-14.7%	-16.1%
2015					-3.9%	-4.9%	-2.1%	-5.7%	-5.9%	-10.3%
2016							-1.9%	-3.2%	-1.9%	-3.2%



AUGUST 2020

STATISTICAL ANALYSIS:  
ELEVATE CONSULTING, LLC  
EXHIBIT 5

LARRY SCROGGS  
STATE OF TENNESSEE, TREASURY DEPARTMENT





# Trends in Tennessee Worker's Compensation Data, 2009-2018

A report for the Tennessee Advisory Council on Worker's Compensation

Analysis report prepared by:  
Elevate Consulting, LLC

[info@elevateevaluation.com](mailto:info@elevateevaluation.com)  
[www.elevateevaluation.com](http://www.elevateevaluation.com)

# Table of Contents

<b>Executive Summary</b> .....	<b>2</b>
<b>Introduction &amp; Project Overview</b> .....	<b>3</b>
<b>Methods</b> .....	<b>3</b>
<b>Who is receiving worker’s compensation?</b> .....	<b>6</b>
By Age .....	6
By Education Level.....	7
By Grand Division .....	7
<b>What types of benefits are individuals receiving?</b> .....	<b>9</b>
Medical Expenses .....	11
Permanent Partial Disability.....	11
Temporary Total Disability .....	12
<b>Are individuals receiving worker’s compensation returning to work?</b> .....	<b>13</b>
<b>What are the trends in conclusion types?</b> .....	<b>14</b>
<b>Are cases progressing in a timely manner?</b> .....	<b>15</b>
Date of Injury to Date of Conclusion.....	15
Date of Injury to Date of Maximum Medical Improvement (MMI) .....	15
Date of Maximum Medical Improvement (MMI) to Date of Conclusion .....	16
<b>How much are individuals being compensated?</b> .....	<b>17</b>
Compensation Across All Cases, All Years .....	17
Total Compensation By Demographics .....	17
Number of Weeks Receiving Benefits .....	18

---

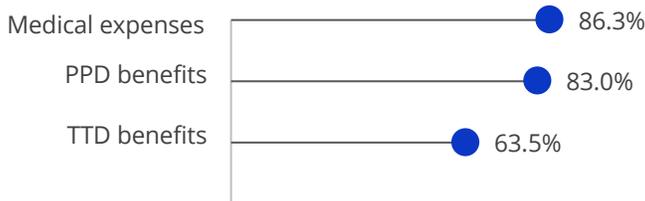
*Cover photo by sol on Unsplash.*

# Executive Summary

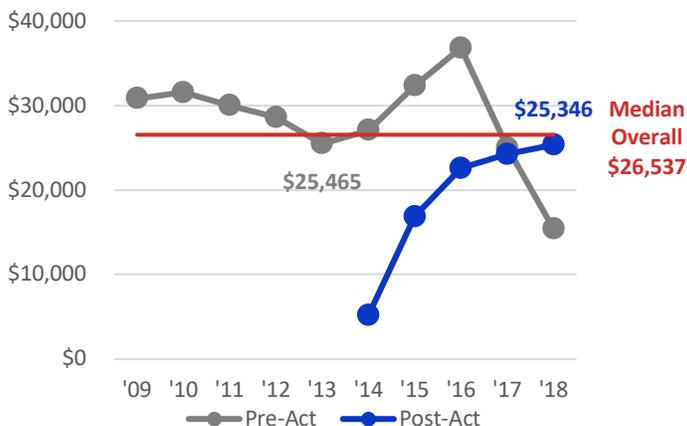
The worker's compensation claims that included a **permanent injury** and concluded **between 2009 and 2018** tended to be for individuals between the ages of 45 and 59, have a high school diploma or equivalent, and the injury more often occurred in East or Middle Tennessee.

<b>47</b>	<b>62%</b>	<b>36%</b>	<b>99%</b>	<b>\$26,536</b>
was the <b>median claimant age</b>	of claimants had a <b>high school diploma</b> (or equivalent)	of injuries occurred in <b>Middle Tennessee</b>	of claims concluded with a <b>settlement</b>	was the <b>median total compensation</b> amount

Medical expenses, permanent partial disability, and temporary total disability benefits were the **most common** benefit types received on workers' compensation claims from 2009 to 2018.



The **median total compensation amount** for pre-Act claims generally exceeded that of post-Act claims.



- Post-Act claims tend to have a **higher percentage of worker's who return to work** as compared to 2013 and earlier.
- While post-Act median medical expenses are consistent with 2013 and earlier medians, **post-Act median permanent partial disability amounts are consistently lower** than median PPD amounts in 2013 and earlier.
- **Decreasing variation in the number of weeks to conclusion**, suggests increasing efficiency in the system.

# Introduction & Project Overview

---

Each year the Advisory Council on Worker's Compensation commissions an independent analysis of worker's compensation claims to understand how the system is functioning, if it is achieving the results it was designed to achieve, and where there are potential areas for improvement.

The goal of the worker's compensation system is to compensate every injured worker in a fair and timely manner. The 2013 Worker's Compensation Reform Act sought to streamline and simplify the processes while continuing to prioritize the fair compensation of individuals. The annual report of the Bureau of Worker's Compensation provides a full analysis of the impact of the Reform Act. This report offers complimentary independent analysis and findings regarding the functioning of the worker's compensation system for claims involving a permanent disability, which were significantly impacted by the Reform Act.

In continuation of past Advisory Council reports, the analysis focused on worker's compensation claims that involved a permanent disability and were concluded between January 1, 2009 and December 31, 2018.

## Methods

---

The data included in this report were obtained from Worker's Compensation Statistical Data Forms (SD Forms) completed between January 1, 2009 - December 31, 2018. The SD Form is the closing document for a claim in which a permanent disability was sustained, and captures information concerning the types of disability benefits received, benefit compensation, and length of disability. Data from the SD Form is housed in the Worker's Compensation Computer System (WCS) database. The 2009 - 2018 timeframe was selected to ensure complete yearly datasets for analysis.

Statistical analyses were primarily descriptive in nature and included measures of central tendency (mean, median, mode), frequency distributions, and cross-tabulations. All data were analyzed in SPSS<sup>1</sup>. Analyses were conducted on SD Form data merged from two WCS extracts, including the NCCI report extract and the SD data extract. Demographic variables present in the SD data extract, including age, county, and education level, were merged into the NCCI report extract. Only the first instance of each demographic response was used since demographics should be consistent across individuals with the same claim

---

<sup>1</sup>IBM Corp. Released 2017. IBM SPSS Statistics for Mac, Version 25.0. Armonk, NY: IBM Corp.

transaction file. However, it is possible that this assumption is incorrect and that there are inconsistencies in the data.

### **Exclusion Criteria**

In order to ensure that any common data errors or outliers were removed from the dataset, the following inclusion/exclusion criteria were used:

- Excluded prior to analysis
  - Cases with duplicate claim transaction numbers or multiple conclusion dates (n=9)
  - Cases with conclusion year prior to 2009 (n=101)
- Excluded for analyses concerning dates of injury, MMI, and conclusion:
  - Cases with a date of injury after the date of MMI and date of conclusion
  - Cases with a date of MMI after the date of conclusion
  - Cases where the number of weeks from the date of injury to date of conclusion is greater than 573, the limit for number of weeks of compensation.
- Excluded for analyses concerning age:
  - Cases where employee age is >14 and <99. Age 14 was selected as the lower limit based on the legal working age in Tennessee.
- Excluded for analyses concerning the number of weeks receiving benefit:
  - Cases where the number of weeks receiving benefit is greater than 573, the limit for number of weeks of compensation. (n=42)
- Excluded for analyses concerning benefit amounts:
  - Cases where the total amount paid out for all benefit types is greater than \$2 million (n=13)

### **Demographic Analyses**

The dataset includes no individually identifying information or unique identifier per individual. Rather, the unique identifier is linked to the claim, and an individual can file more than one claim over time. Due to the limited demographic data collected through the SD forms, we were unable to exclude duplicate individuals with more than one claim in the analysis of demographics. Data from the American Community Survey (ACS), administered by the US Census Bureau, were used in the statewide demographic comparisons. We selected 5-year ACS estimates for these comparisons. The 5-year estimates include demographic data from 2013-2017 and are considered by the Census Bureau to be more reliable metrics<sup>2</sup>. Age analyses were based on the “age at injury” variable to account for the individuals age at the start of their involvement with the worker’s compensation system. Finally, individual counties were recoded into their grand divisions for ease of analysis and reporting.

---

<sup>2</sup> <https://www.census.gov/programs-surveys/acs/guidance/estimates.html>

### Conclusion Type

We did not use the same categories as in previous analyses for conclusion types. Instead, categories were grouped for analysis by trial, settlement, and compensation hearing. See table below for recode methodology.

<b>Variable Name in Dataset</b>	<b>Recoded variable</b>
Trial	Trial
Settlement approval	Settlement
Sett/complaint not filed	Settlement
Sett/Dept of Labor	Settlement
Sett/complaint filed	Settlement
Complaint/vol dismissal	Settlement
Compensation hearing ( <i>option ONLY present post-reform</i> )	Compensation hearing

# Who is receiving worker's compensation?

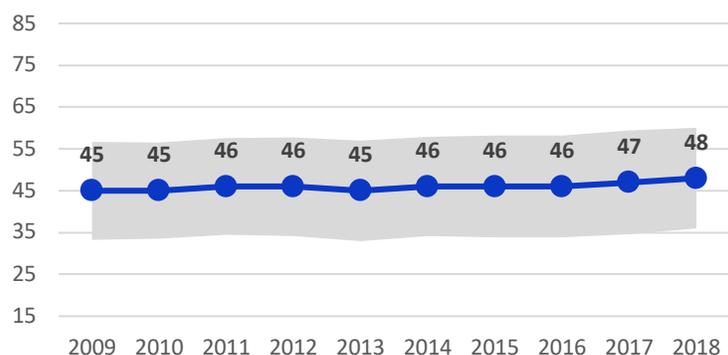
## By Age

On average, individuals receiving worker's compensation are in their **mid to late 40's**. This trend has remained consistent from 2009-2018. The mean age across all years is 46 years old. When categorized by age group, the worker's compensation population is disproportionately concentrated in the 45 to 59 age range as compared to the distribution of the general Tennessee population<sup>3</sup>. Age analyses were based on the individual's age at the time of injury. Thirty-eight percent (38.7%) of cases were missing age information and results may not be representative of the total worker's compensation population.

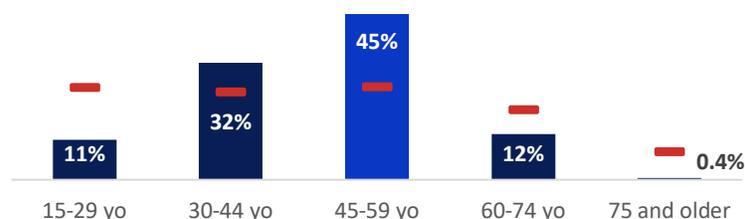
The **mean age** of worker's compensation recipients has **remained steady** each year.

**Blue** indicates mean age.

**Gray** indicates standard deviation, where most recipients fell.



From 2009 to 2018, **almost half** of all workers' compensation recipients were **between 45 and 59 years** old. This distribution differs from the distribution of age ranges in the **Tennessee population** as a whole.

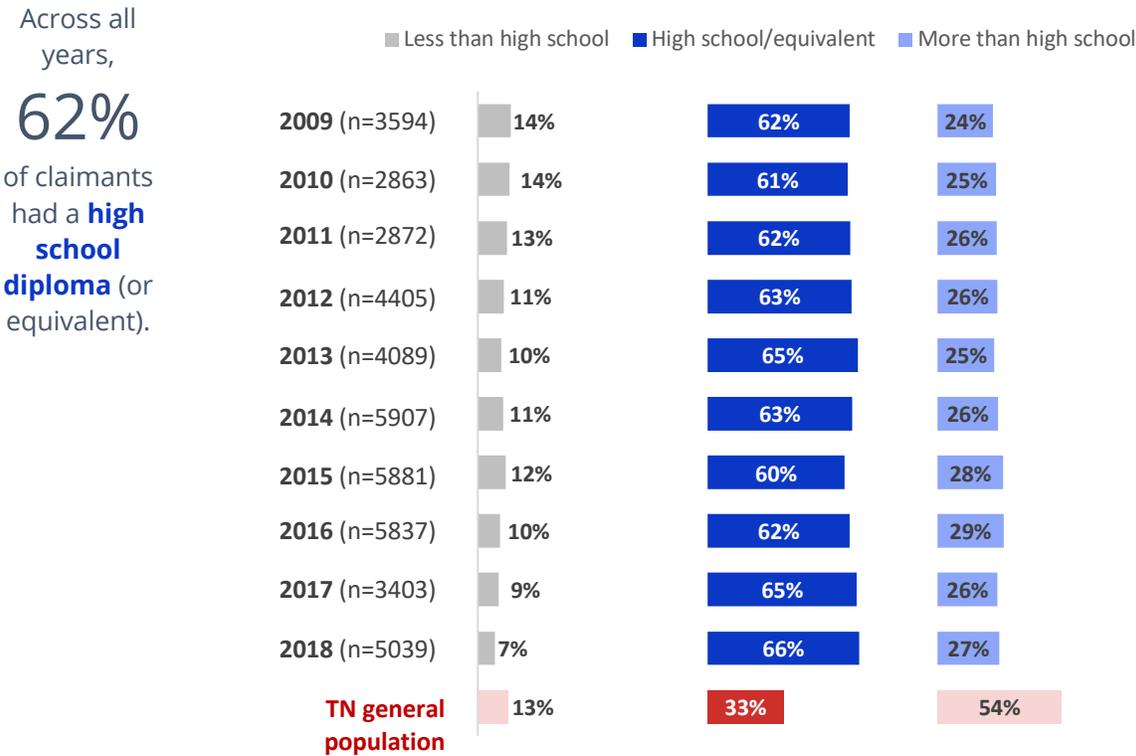


<sup>3</sup> ACS 5-Year Estimates, 2017.

## By Education Level

The majority (66%) of individuals whose claims concluded in 2018 had a **high school diploma or equivalent**. This trend has remained relatively consistent from 2009-2018, though the percentage of recipients with less than a high school diploma is decreasing over time. Compared to the highest level of education across the Tennessee population ages 18 and older<sup>4</sup>, the worker’s composition population has a lower percentage of individuals with more than a high school diploma. Twenty-six percent (26%) of cases were missing education level information. Results may not be representative of the total worker’s compensation population.

The majority of workers' compensation recipients each year have a **high school diploma** (or equivalent).



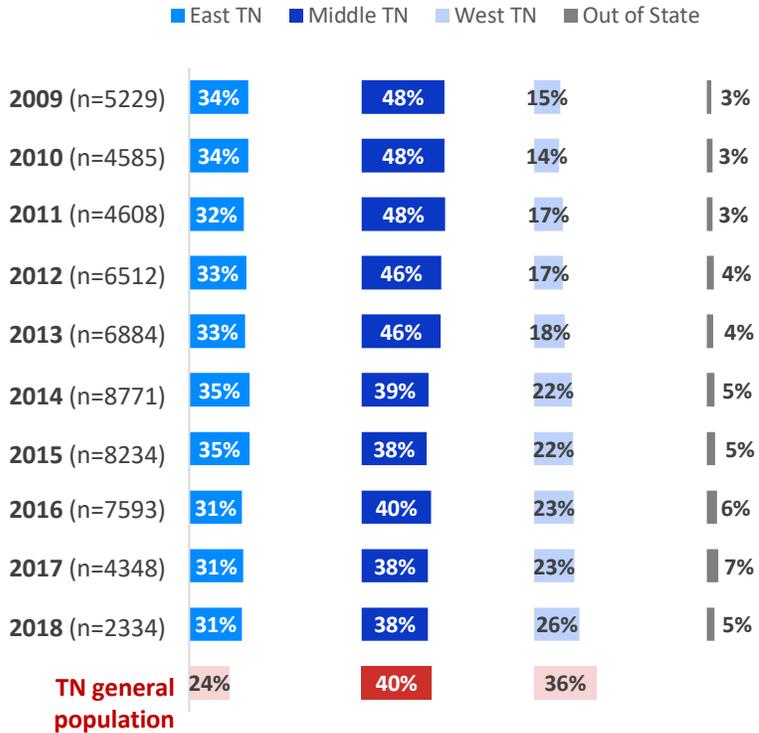
## By Grand Division

The distribution of worker’s comp claims across the Grand Divisions parallels the overall population distribution (Census Bureau estimates, 2016), with relatively equal concentration of claims in **East and Middle Tennessee** and a lower concentration of claims in West Tennessee. From 2009 to 2018, the distribution of concluding claims has shifted a small amount, with small increases in out of state claims and claims in West TN.

<sup>4</sup> ACS 5-Year Estimates, 2017.

Missing data was not an issue for all years except 2018, where 60.4% of cases were missing county-level information.

The **majority** of workers' compensation recipients each year had an injury that occurred in **Middle Tennessee**. However, there have been **increasing numbers** of recipients reporting injuries in **West Tennessee**.

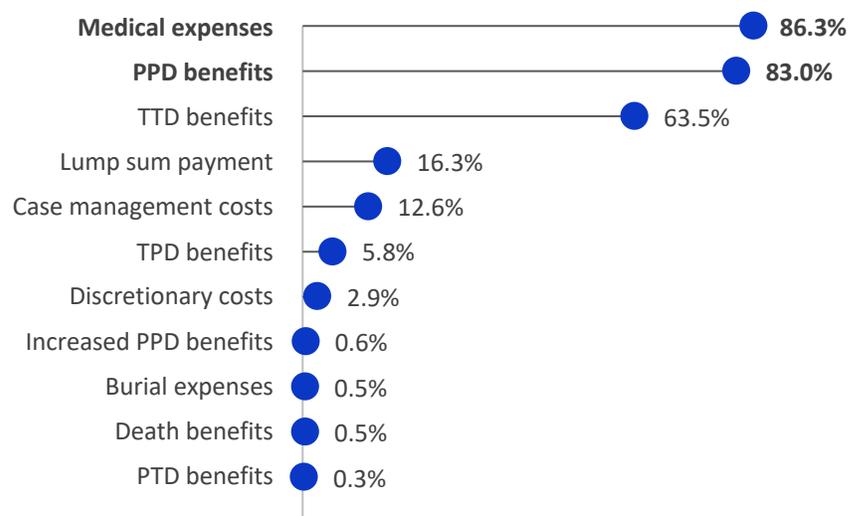


Across all years,  
**36%**  
of injuries occurred in  
**Middle Tennessee**

## What types of benefits are individuals receiving?

For all cases, the most common benefit types were **medical expenses** (86.3%), **permanent partial disability (PPD) benefits** (83%), and **temporary total disability (TTD) benefits** (63.4%). This suggests that a typical worker's compensation claim covers medical expenses for treatment, that most workers do not return to work while they are receiving treatment, and that most workers reach maximum medical improvement (MMI) with some remaining impairment, leading to permanent partial disability (PPD). Very few cases receive temporary partial disability (TPD) during treatment (6%) or permanent total disability (PTD) after reaching MMI (.3%).

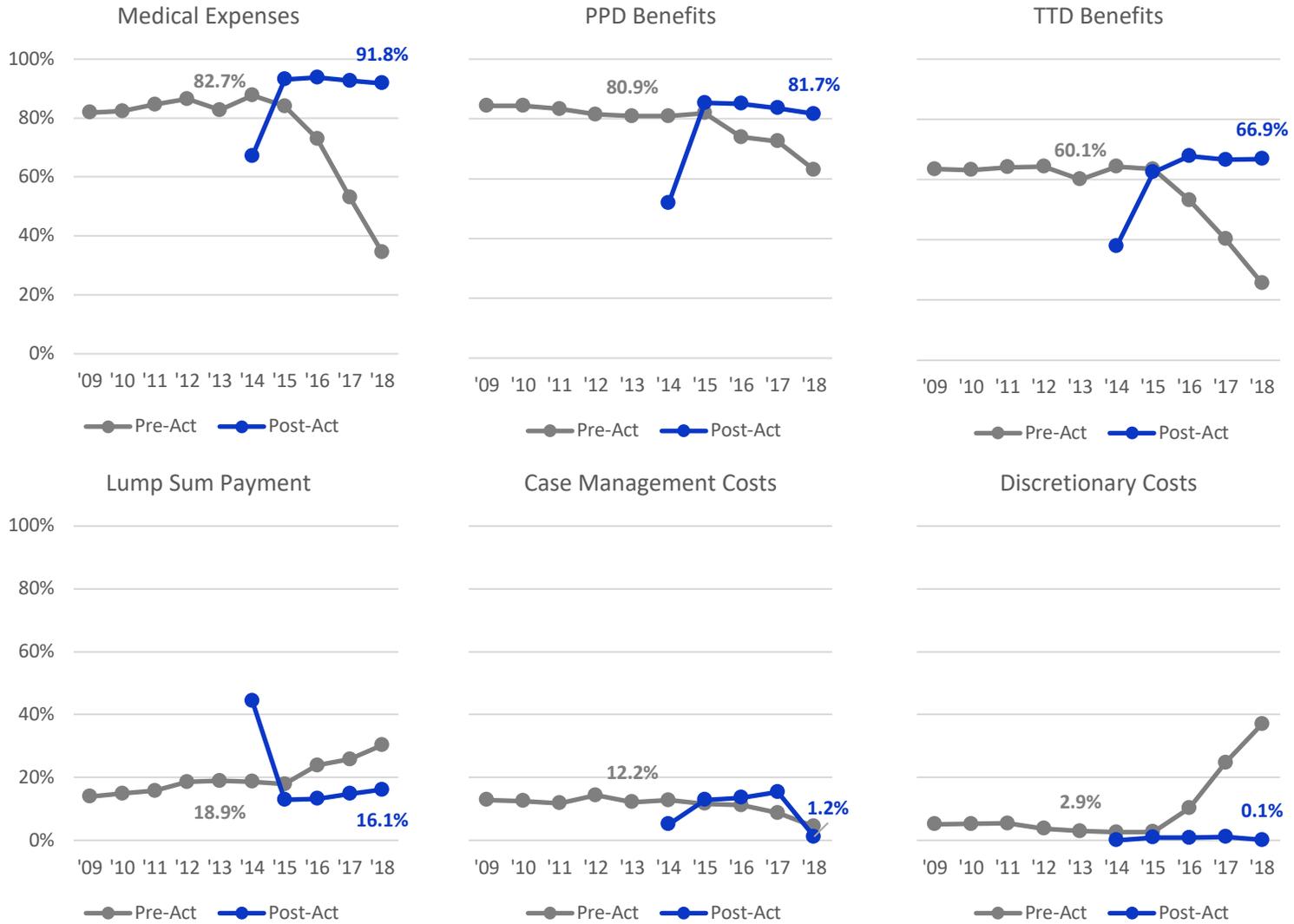
**Medical expenses** and **PPD benefits** were the **most common** benefit type received on workers' compensation claims from 2009 to 2018 (n=100,558).



In general, the percentage of 2018 post-Reform cases that include each benefit type is similar to the 2013 pre-Reform percentages. This comparison is useful because 2018 is the first year that the number of post-Reform cases was comparable to the number of annual cases in 2013 and earlier. Fluctuations in the year to year trends, displayed below, are largely attributable to the small number of post-Reform cases concluding each year. Data visualization was not included for burial expenses, death benefits, and permanent total disability because the percentage of cases is so low each year.

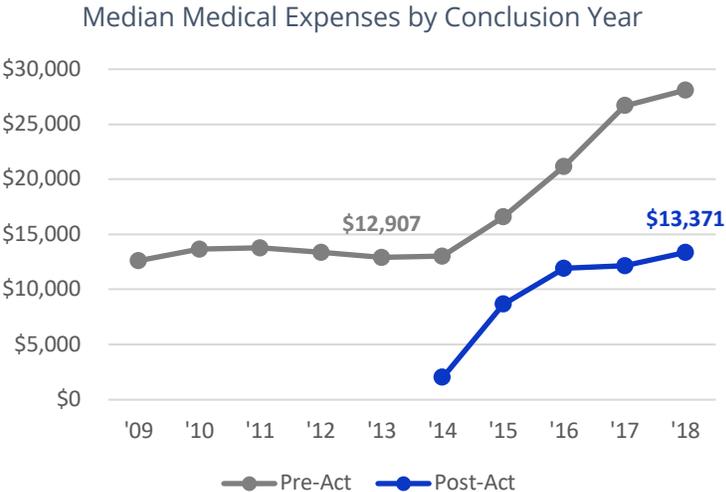
Post-Reform cases have a slightly higher percentage of claims that include medical expenses, with 92% of post-Reform cases in 2018 compared to 83% of cases in 2013. Similarly, there is a slight increase in the percentage of cases including TTD benefits, with 67% receiving TTD in 2018 post reform cases compared to 60% in 2013.

Post-reform cases have a slightly higher percentage of claims that include medical expenses. Similarly, there is a slight increase in the percentage of cases including TTD benefits..



## Medical Expenses

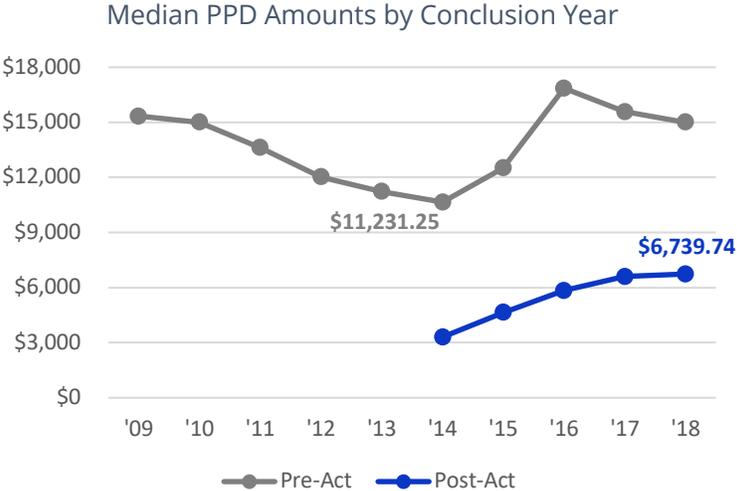
The median amount of **medical expenses for post-Act claims is comparable** to the median in 2013 and earlier. For injuries that occurred prior to the Reform Act, the median amount of medical expenses paid out remained steady until 2015. The subsequent increase in medical expenses for pre-Act claims may be explained by the length of time these cases took to conclude; longer cases likely result in increased medical costs.



Across all years the **median amount** paid in **medical expenses** was **\$12,878**

## Permanent Partial Disability

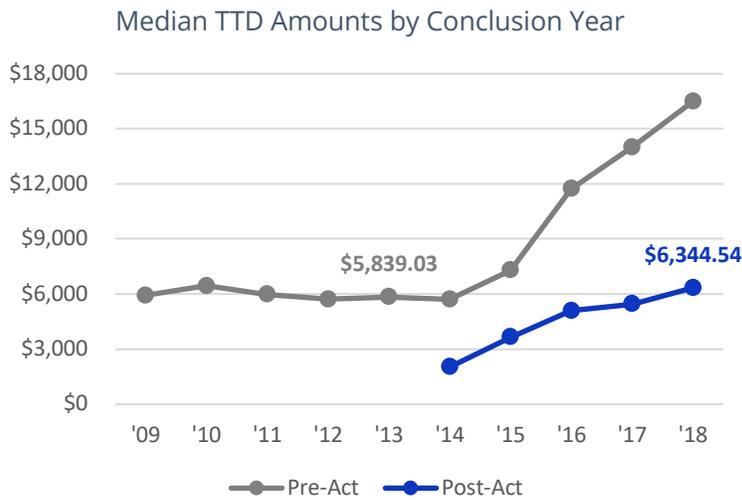
The median amount of **Permanent Partial Disability paid in post-Act cases is much lower** than in 2013 and earlier pre-Act cases. There was also an increase in the median amount for pre-Act Permanent Partial Disability payments around the time the Reform Act took place, again likely due to the length of time these cases took to resolve.



Across all years the **median amount** paid in **Permanent Partial Disability** was **\$10,000**

## Temporary Total Disability

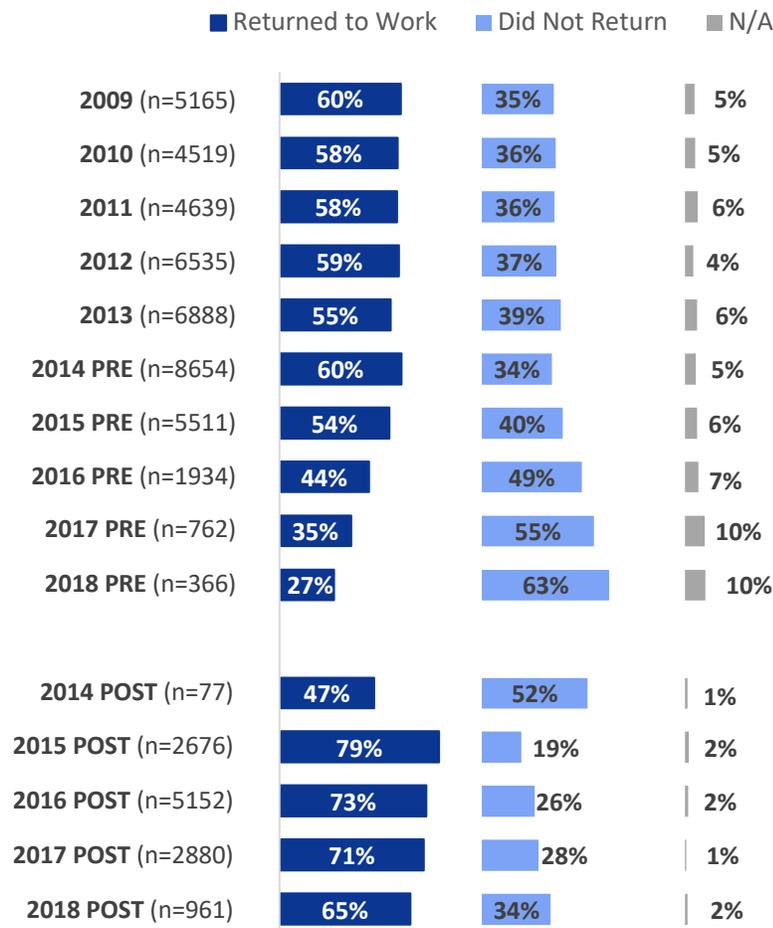
The median amount of **Temporary Total Disability paid in post-Act cases in 2018 was slightly higher** than the median of TTD paid in 2013. An increase in the median amount of pre-Act Temporary Total Disability payments around the time the Reform Act took place, likely due to length of time to resolve cases, was observed.



Across all years the **median amount** paid in **Temporary Total Disability** was **\$5,771**

# Are individuals receiving worker's compensation returning to work?

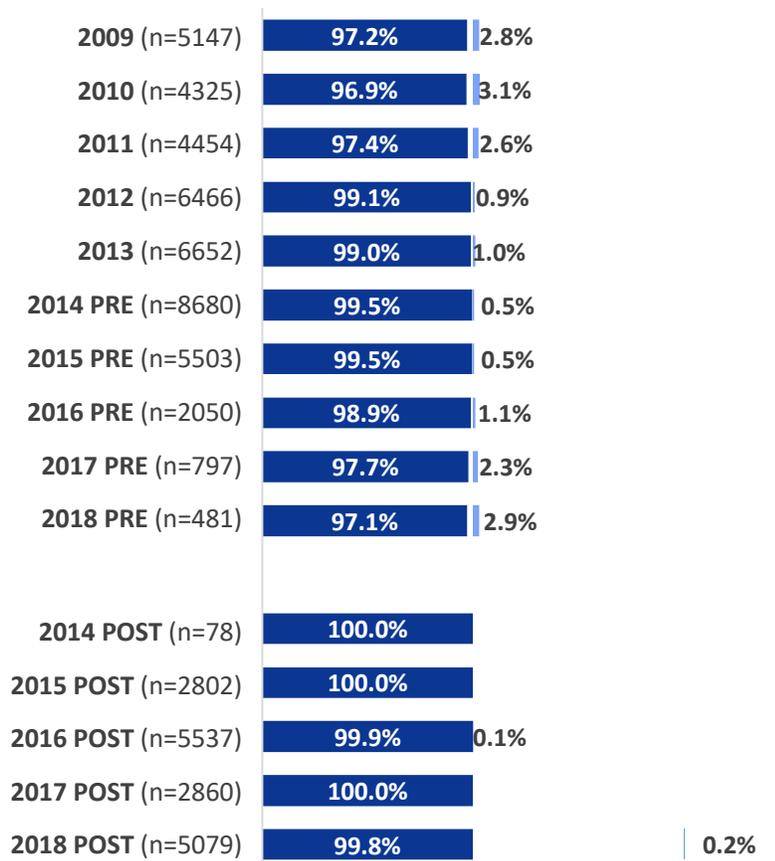
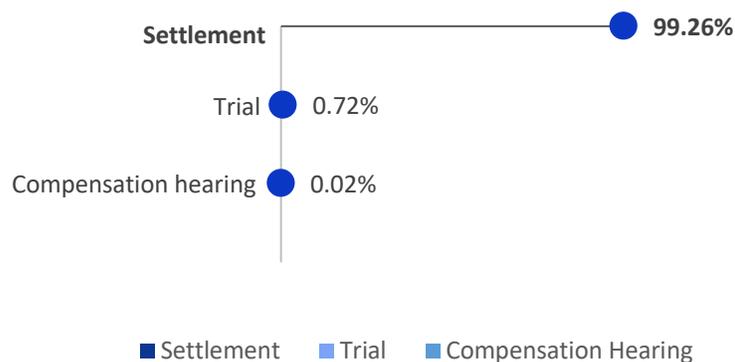
The **majority** of individuals filing workers' compensation claims **return to work**. In general, post-Act cases concluding in 2015 and later had a higher percentage of worker's returning to work as compared to the 2013 and earlier percentages. Increases in individuals with pre-Act injuries *not* returning to work between 2015-2018 may be a result of the smaller number of cases and the nature of the claims. There were 56,719 claims (63.6%) with a valid conclusion year.



## What are the trends in conclusion types?

The **overwhelming majority** of cases are **concluded via settlement**. This trend has remained consistent year over year and from pre- to post-reform. Compensation hearings were not introduced as a conclusion type until after the reform and were only observed in post-Act cases concluded in 2018. For the purposes of analysis, conclusion types were re-categorized into three groups: Settlement, Trial, and Compensation Hearing. Across all years, 91,588 claims (91.1%) had a valid conclusion type.

Percentage of Claims by Conclusion Type, 2009-2018



# Are cases progressing in a timely manner?

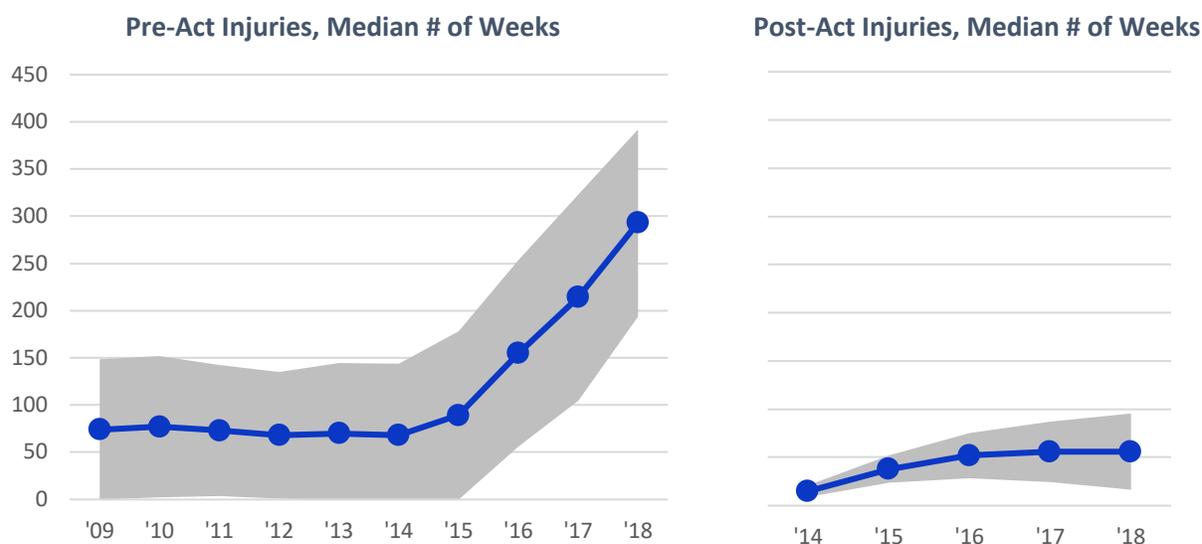
## Date of Injury to Date of Conclusion

The median number of weeks from injury to conclusion was **68 weeks** across all years. The median number of weeks from injury to conclusion has **remained similar from pre- to post-reform**. However, the median number of weeks is becoming more consistent post-reform. Across all years, 61,881 (63.2%) claims had a valid response for number of weeks from injury date to conclusion date.

### Date of Injury to Date of Conclusion

**Blue** indicates median number of weeks.

**Gray** indicates standard deviation, where most cases fell.



## Date of Injury to Date of Maximum Medical Improvement (MMI)

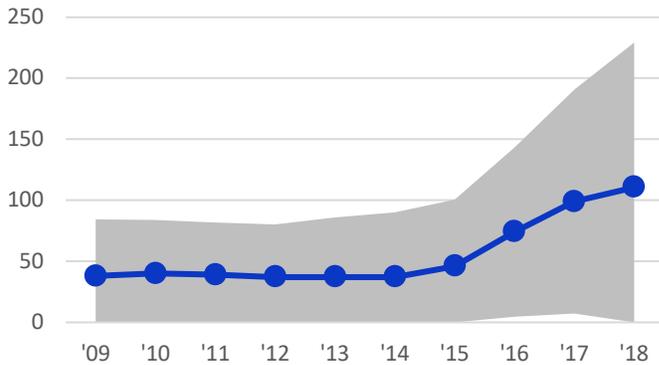
The median number of weeks from injury to maximum medical improvement (MMI) was **36 weeks** across all years. The median number of weeks from injury to date of MMI has **remained similar from pre- to post-reform**. However, the median number of weeks is becoming more consistent post-reform. Across all years, 86,595 (88.5%) claims had a valid response for number of weeks from injury date to date of MMI.

**Date of Injury to Date of Maximum Medical Improvement (MMI)**

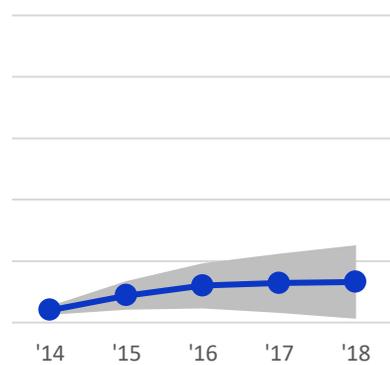
**Blue** indicates median number of weeks.

**Gray** indicates standard deviation, where most cases fell.

**Pre-Act Injuries, Median # of Weeks**



**Post-Act Injuries, Median # of Weeks**



**Date of Maximum Medical Improvement (MMI) to Date of Conclusion**

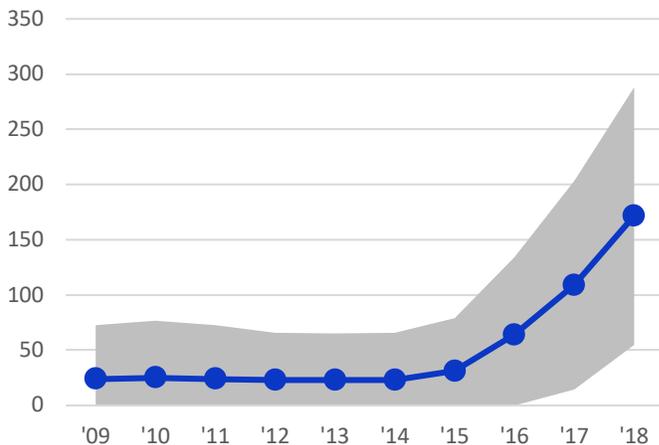
The median number of weeks from injury to maximum medical improvement (MMI) was **37.8 weeks** across all years. The median number of weeks from date of MMI to date of conclusion has **remained similar from pre- to post-reform**. However, the median number of weeks is becoming more consistent post-reform. Across all years, 53,786 (55.0%) claims had a valid response for number of weeks from date of MMI to date of conclusion.

**Date of Maximum Medical Improvement (MMI) to Date of Conclusion**

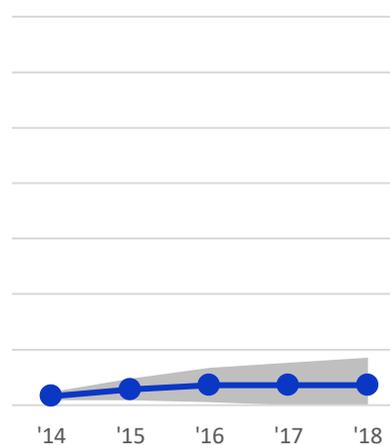
**Blue** indicates median number of weeks.

**Gray** indicates standard deviation, where most cases fell.

**Pre-Act Injuries, Median # of Weeks**



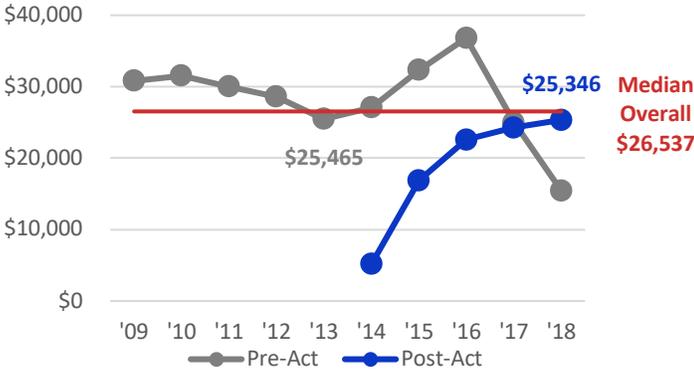
**Post-Act Injuries, Median # of Weeks**



# How much are individuals being compensated?

## Compensation Across All Cases, All Years

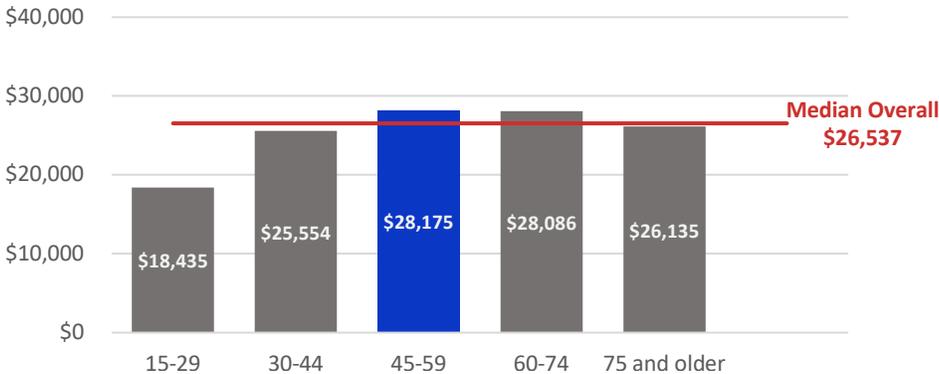
The **median total compensation** amount across all years was **\$26,537**. The median total compensation amount for pre-Act claims generally exceeded that of post-Act claims. The unusually low median amount in 2014 post-Act claims is likely due to a small sample size and quicker resolution of claims. Claims where total amounts exceeded \$2 million were excluded from analysis (n=13) and 100,558 valid cases remained.



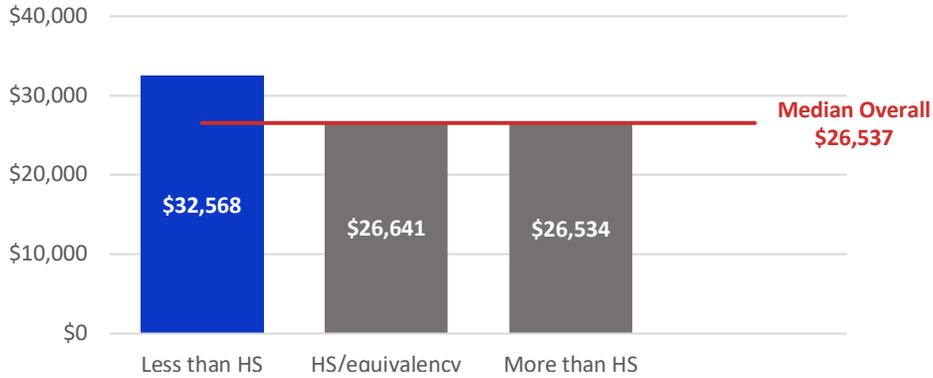
## Total Compensation By Demographics

Claimants between **45 and 59 years old**, with **less than a high school education**, and from **Middle Tennessee** had the **highest** median total compensation amount from 2009 to 2018. Median amounts of compensation by demographic groups are displayed below. The red line indicates the overall median amount of total compensation across all groups and years.

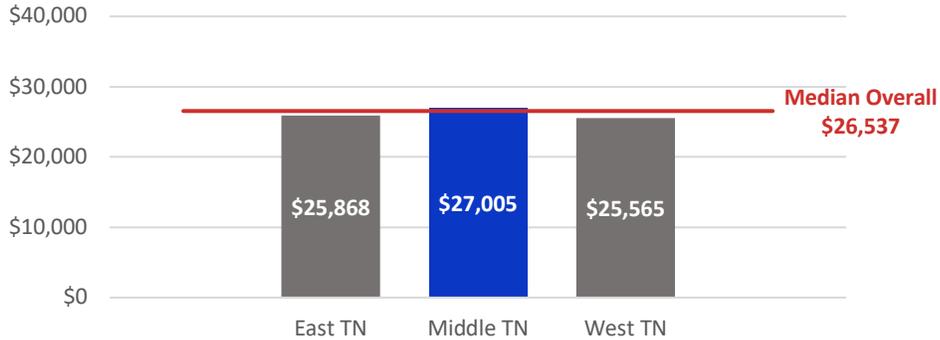
### Claimants by Age, 2009-2018



### Claimants by Education Level, 2009-2018

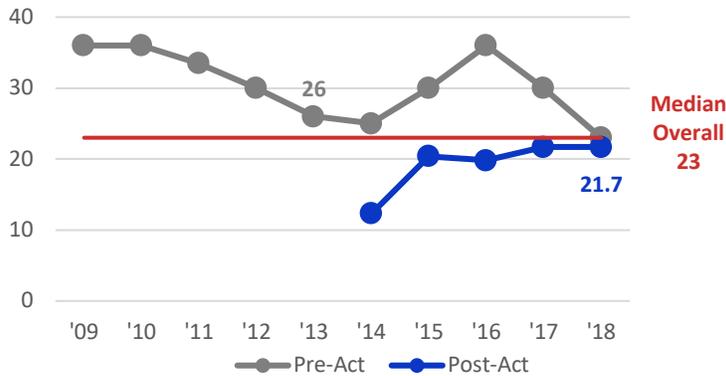


### Claimants by Geographic Grand Division, 2009-2018



### Number of Weeks Receiving Benefits

The median length of time individuals received benefits (across all years) was **23 weeks**. The median number of weeks individuals received benefits for pre-Act claims generally exceeded that of post-Act claims. In all post-Act years, the median number of weeks fell below the overall median across all years. Cases were excluded from analysis where the number of weeks receiving benefits exceeded 573 (n=42). There were 79,118 cases (78.7%) with valid responses for number of weeks receiving benefits.





AUGUST 2020

OVERVIEW OF WORKERS'  
COMPENSATION ENVIRONMENT AND  
MARKET CONDITIONS

EXHIBIT 6

LARRY SCROGGS  
STATE OF TENNESSEE, TREASURY DEPARTMENT





**Overview of Tennessee's  
Workers' Compensation Market Conditions and Environment**

**Advisory Council on Workers' Compensation**

# National Picture



# Property & Casualty Underwriting Results

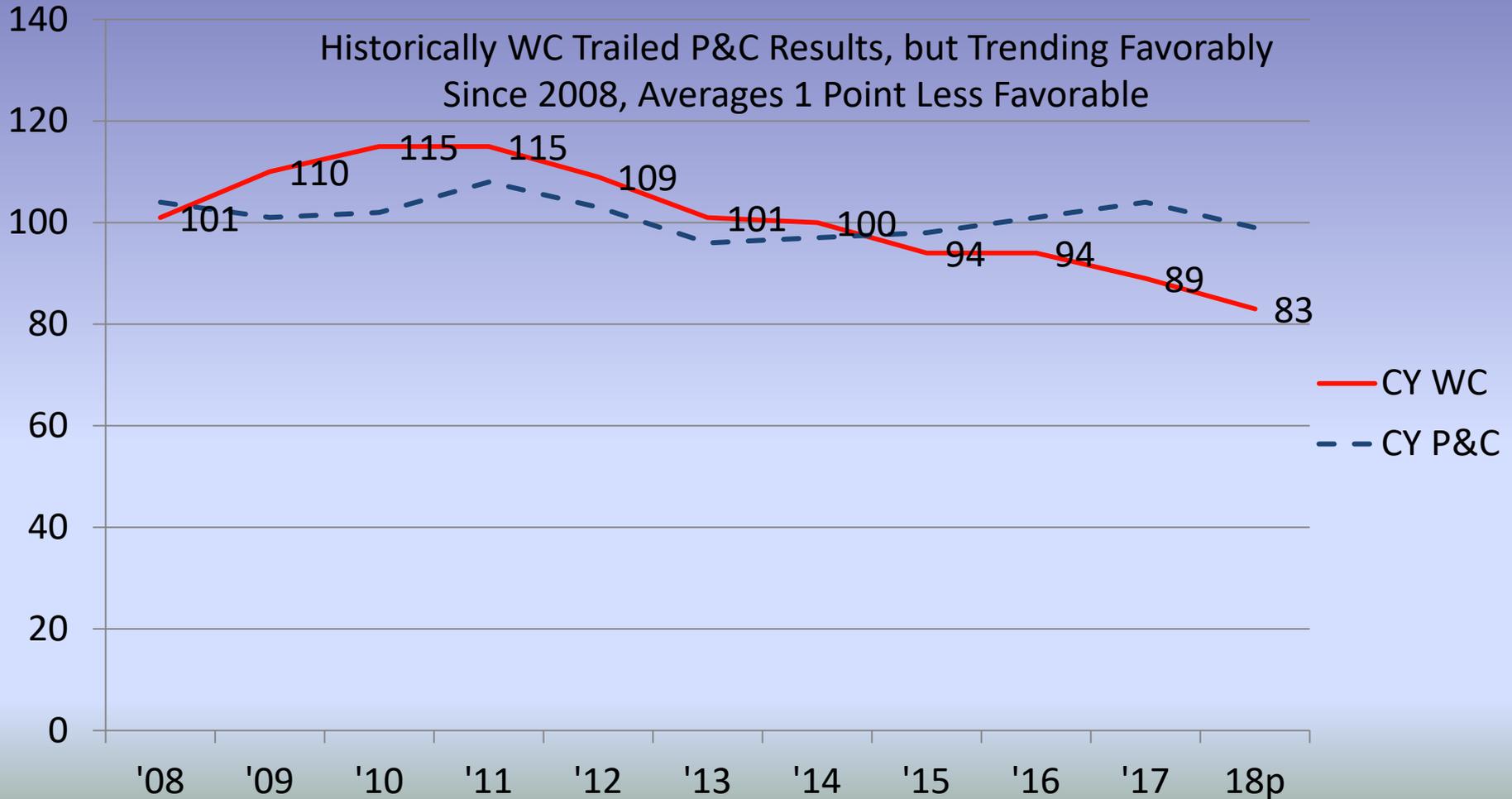
- Combined Ratio = Expense Ratio + Loss & LAE Ratio; results <100 equates to an underwriting profit

Net Calendar Year Combined Ratio – Private Carriers

<b>Line of Business</b>	<b>2016</b>	<b>2017</b>	<b>2018 preliminary</b>
Personal Auto	106%	103%	98%
Homeowners	93%	107%	104%
Com. Multi Peril	102%	108%	107%
Com. Auto	111%	111%	108%
Workers' Comp	94%	89%	83%
Total P&C Industry	104%	104%	99%

Sources: NCCI for Workers Compensation; Annual Statement Data for Total P/C Industry

# Calendar Year Combined Ratios



Source: NCCI; NAIC Annual Statement Data; 2018 preliminary data

# NCCI 2019 Annual Issues Symposium “Word” Describing 2018 Performance

“**Delivering**—as a reminder that we must continue delivering on our 100-year-old promise to workers and their families.” Bill Donnell (NCCI CEO)

Direct written premium was flat	Loss costs decreased	Very low combined ratio	Reserve deficiencies evaporated	Net written premium rose sharply					
D	E	L	I	V	E	R	I	N	G
Employment, wages, and payroll increased	Investment gains on insurance transactions slipped a bit	Economic factors contributed to a milder decrease in frequency	Indemnity and medical severity changes moderated	Gain from operations increased					

Source: NCCI

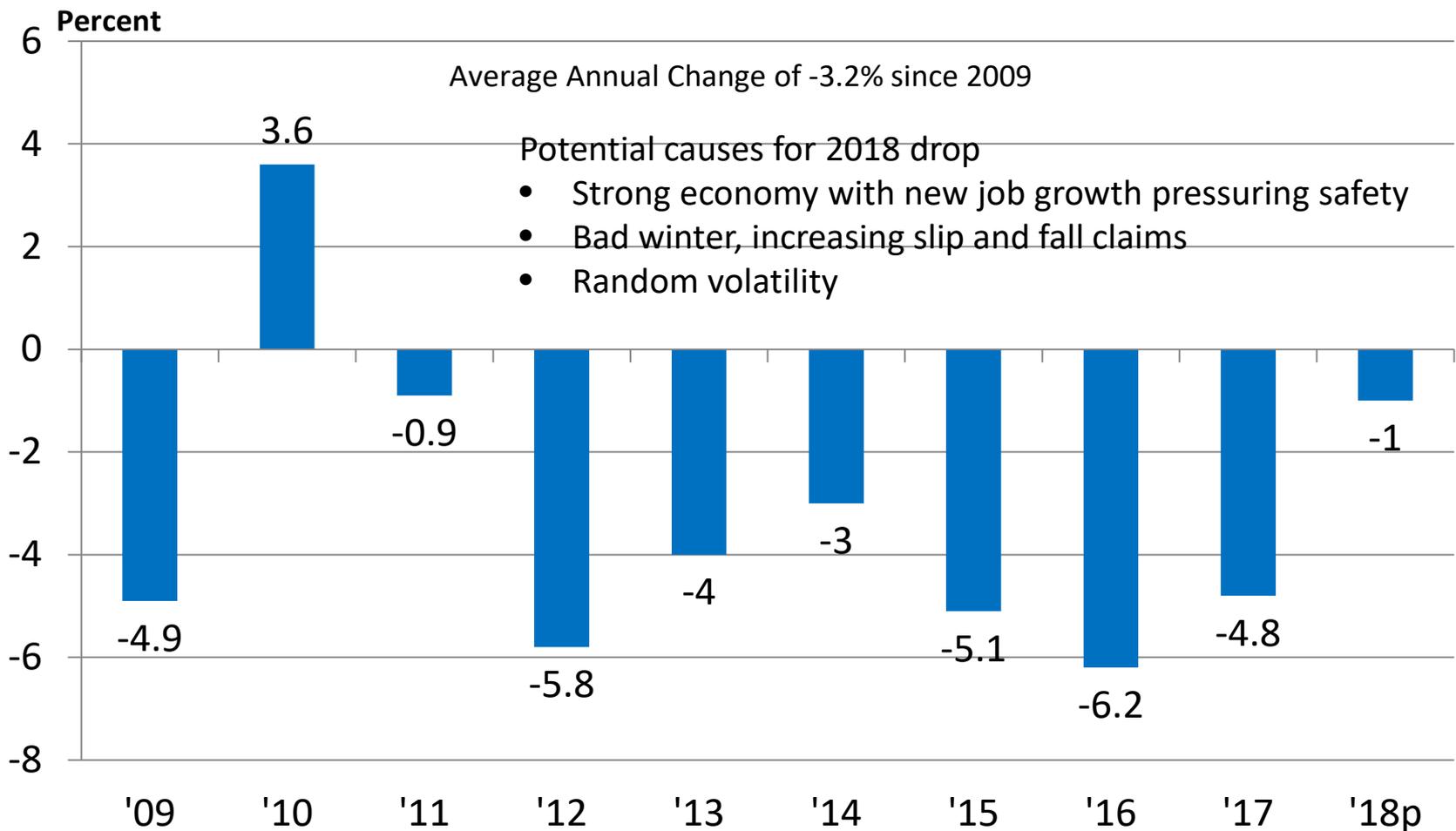
© Copyright 2019 NCCI Holdings, Inc. All Rights Reserved.

# Cost Driver Roundup

- Average indemnity claim severity for the past two years is stable at a 3.7% increase, tracking just above wage inflation for the past five years.
- Medical lost-time severity is projected to have decreased to 1% in 2018, averaging 2.6% for the past two years. Since 2008, medical lost-time claim severity increases have tracked closely with medical care price changes.

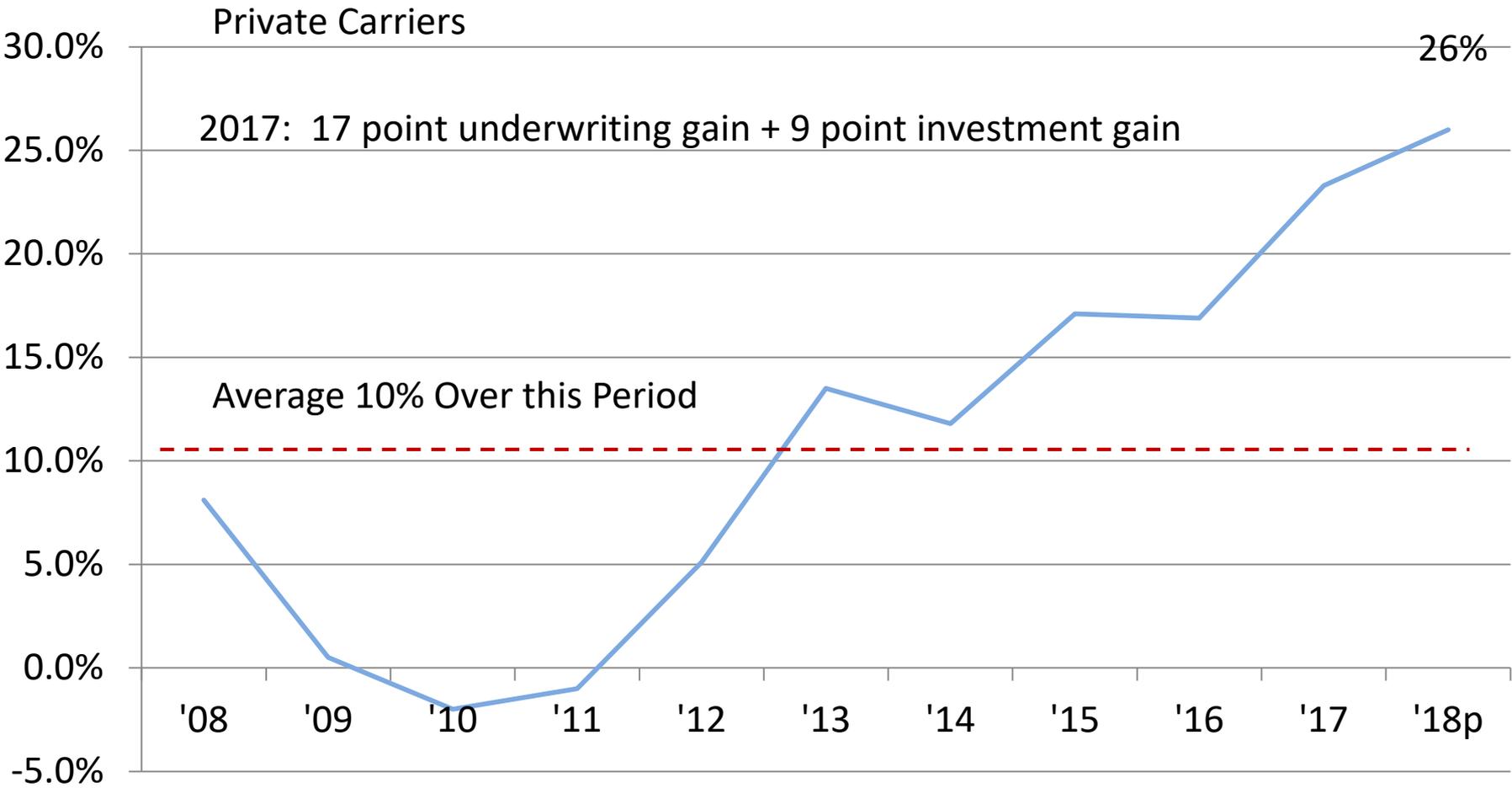
Source: NCCI

# WC Lost-Time Claim Frequency Continued to Decline in 2018, but at a Slower Pace



Source: NCCI; 2018 is Preliminary; 2010 & 2011 frequency is adjusted for recessionary factors

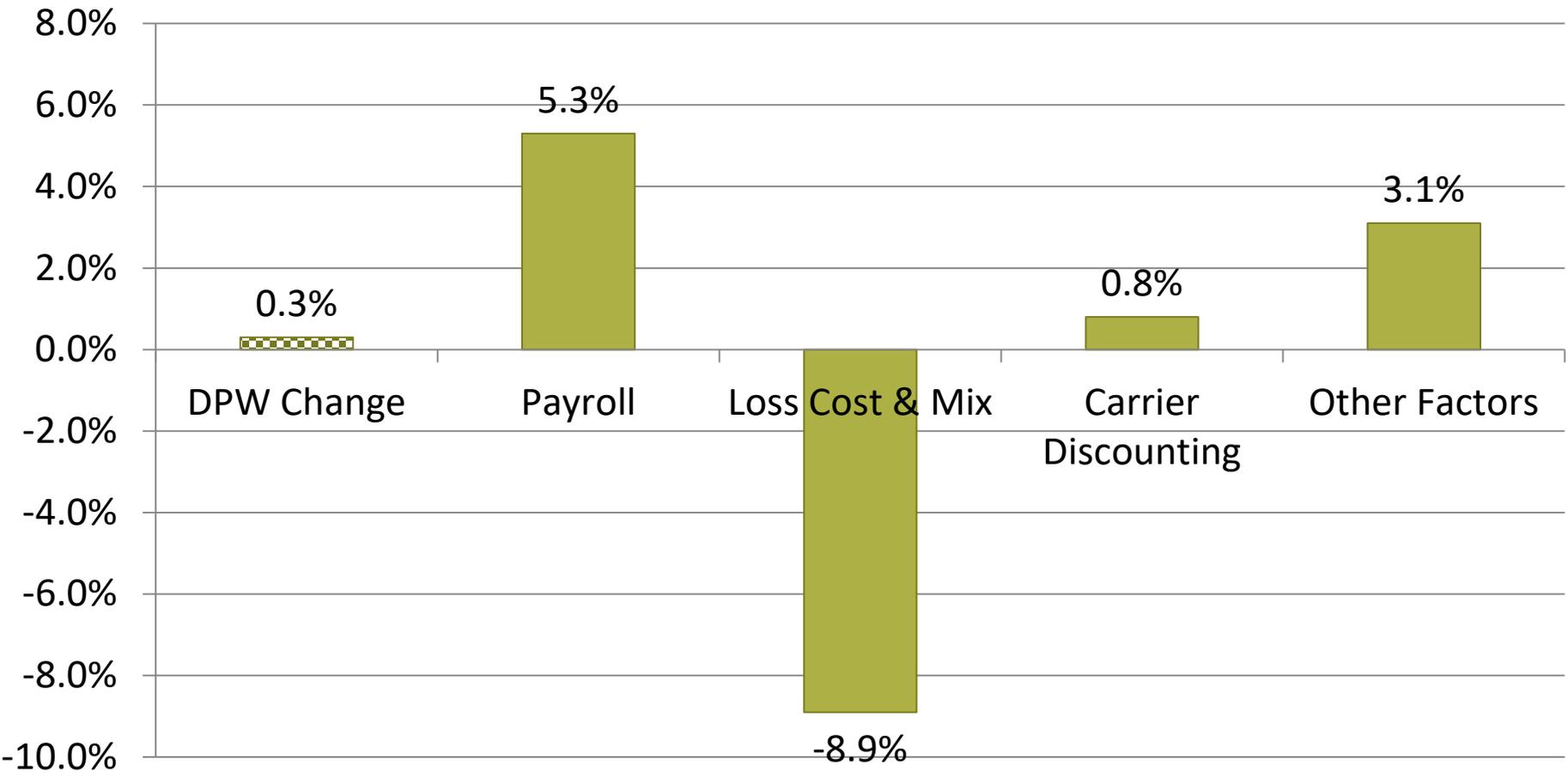
# Pretax Operating Gain – Best Result in Over 20 Year Period!



Source: NAIC Annual Statement Data; 2018 NCCI - preliminary

# Breakdown of Countrywide 2018 Direct Premium Written Change

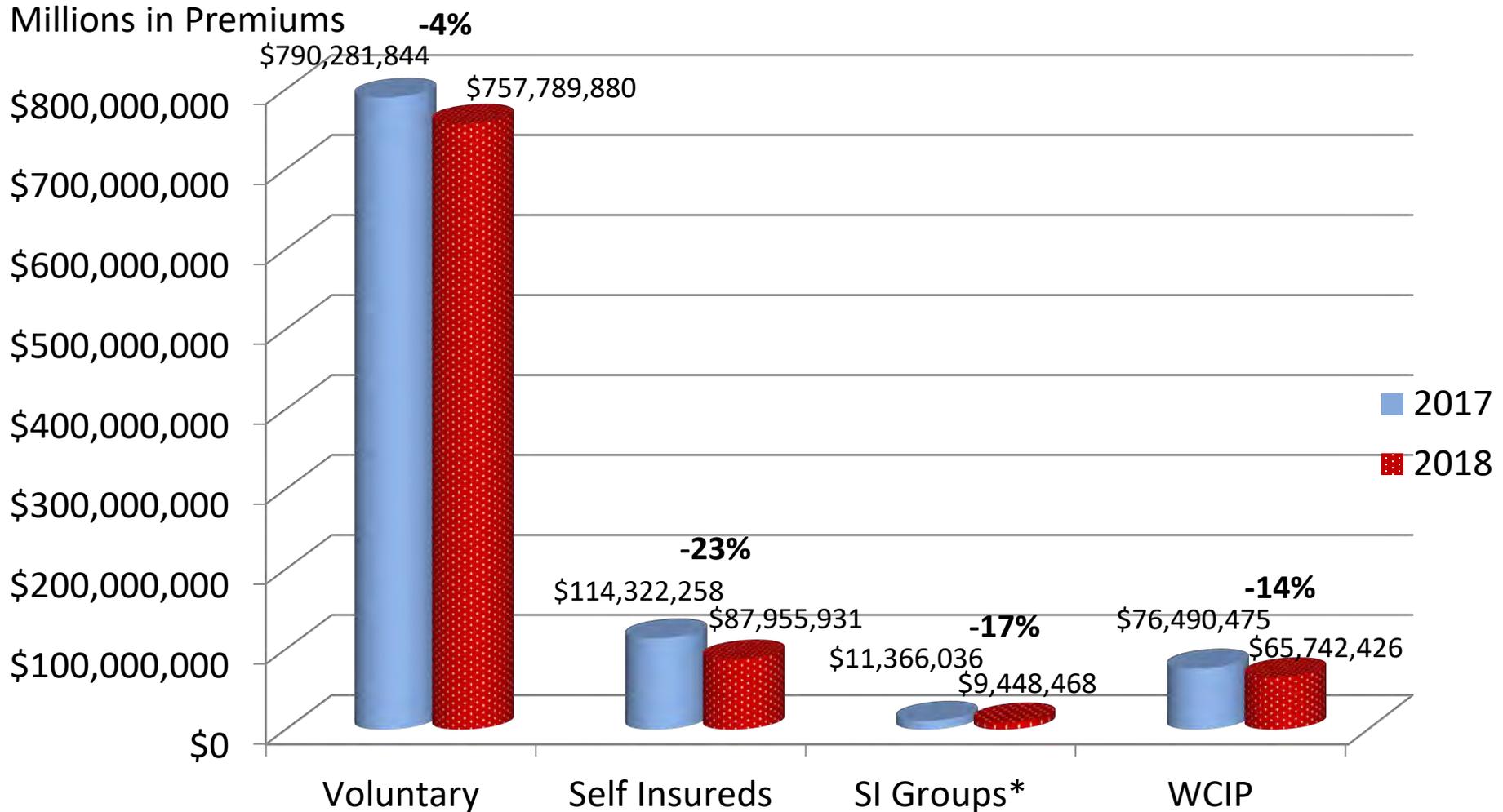
## Component Change



# Tennessee Specific

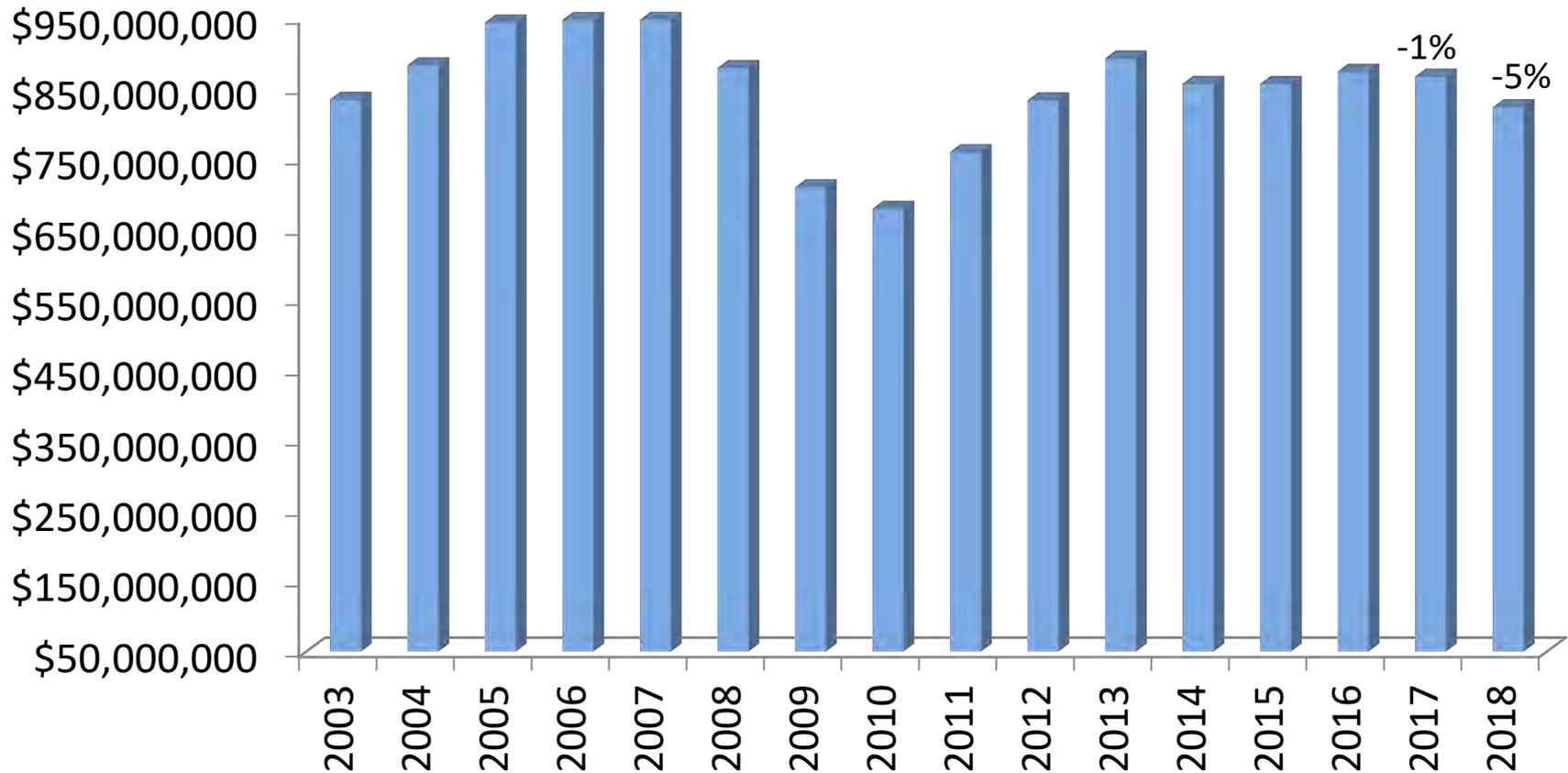


# 2017 and 2018 WC Market Segment (\$000)



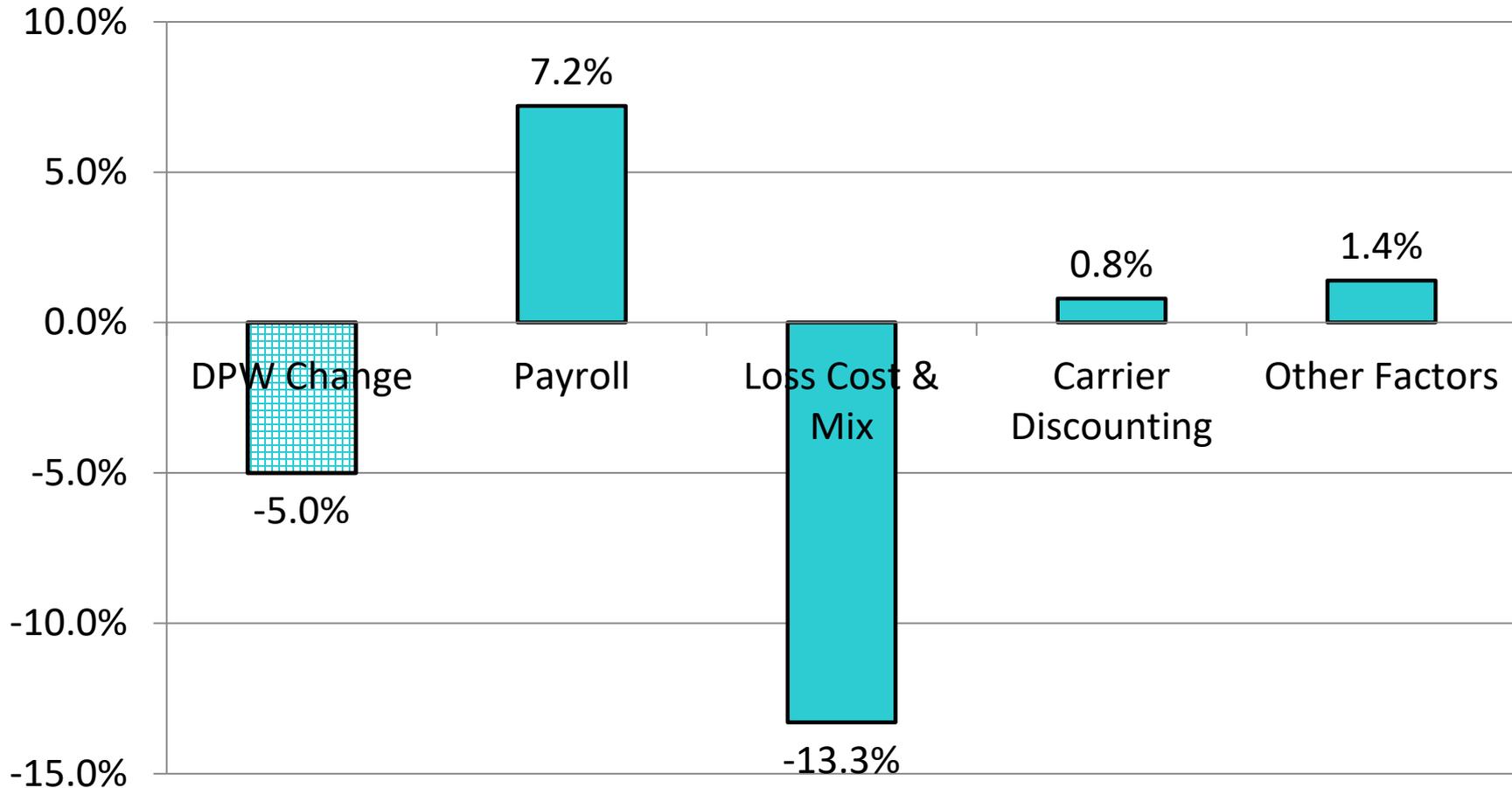
\* Excluding government sponsored groups; Individual Self Insureds are on an equivalent premium basis, Group premiums are estimated. CAGC Group discontinued writing coverage after 2017.

# TN Direct Premium Written Premium (DPW) History



# Breakdown of Tennessee 2018 Direct Premium Written Change

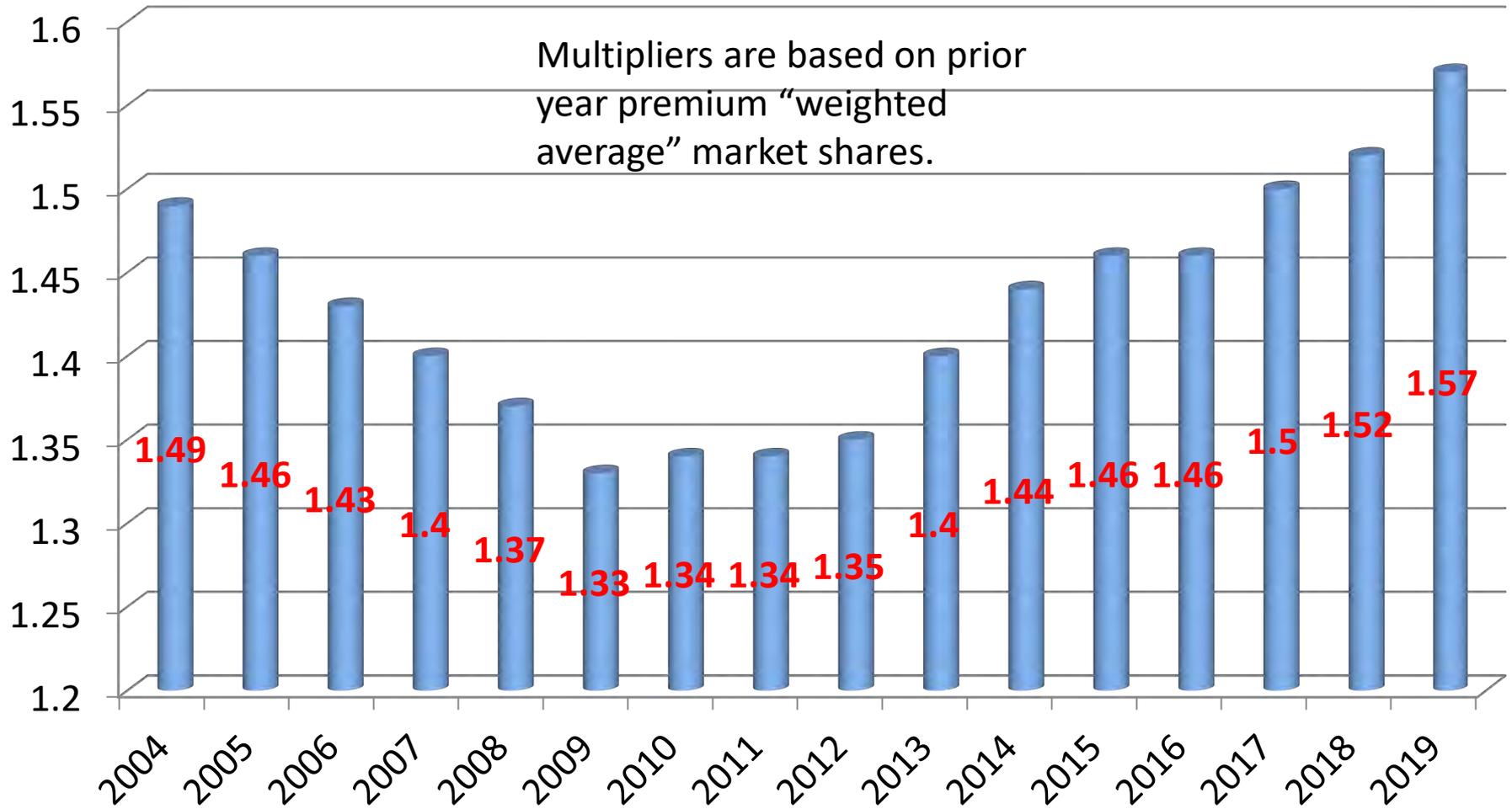
## Component Change



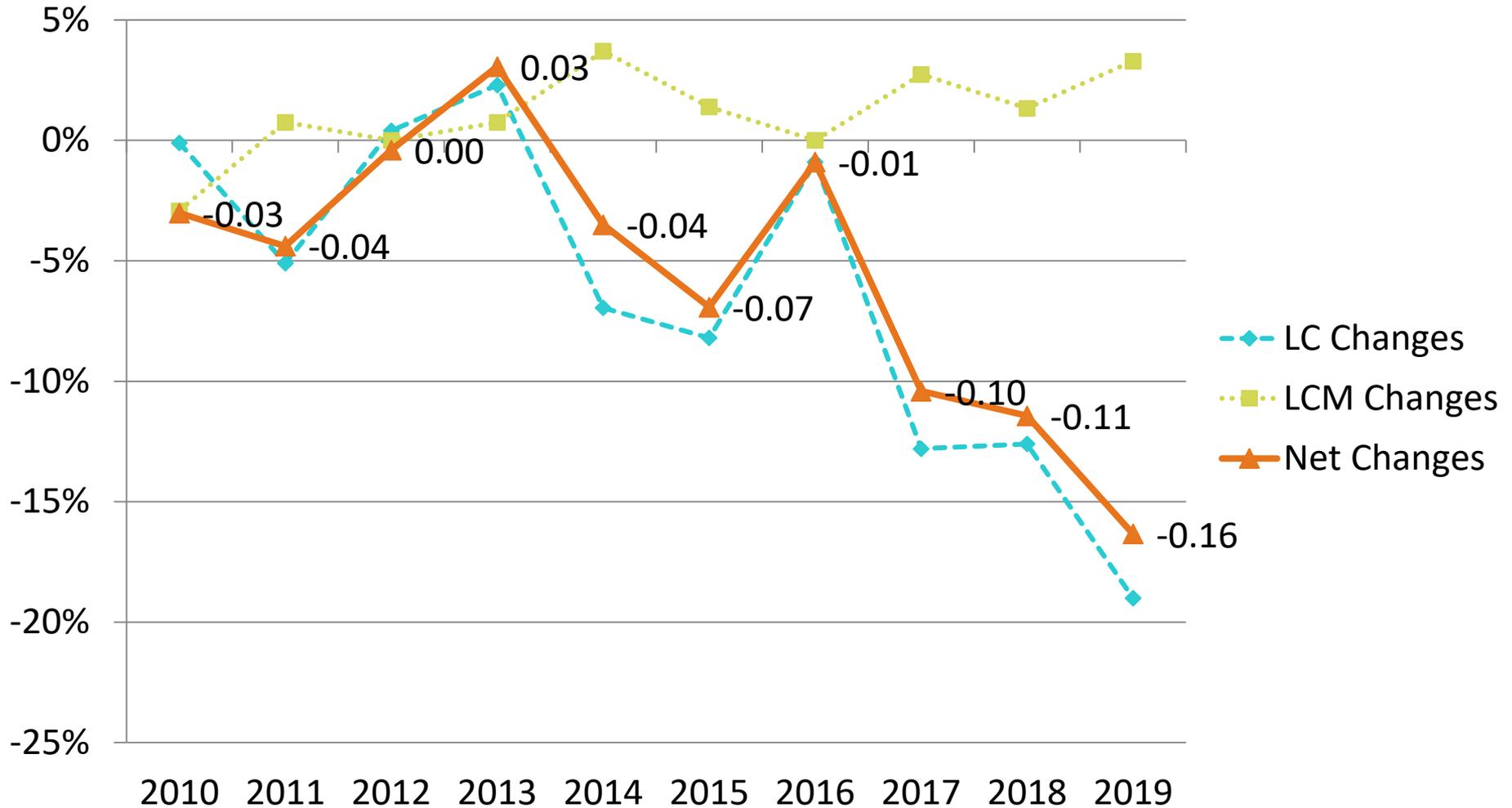
# Loss Cost Filing & Final Approvals – Past 10 Years

Year Filing Made	NCCI Filed Rate	Advisory Council Recommendation	C&I Approved Rate	Effective Date
2009	-.1%	-.1%	-.1%	3/1/2010
2010	-5.1%	-5.3%	-5.1%	3/1/2011
2011	6.3%	6.3%	6.3%	11/1/11
2011	1.6%	-.3%	.4%	3/1/12
2012	-5.1%	-5.1%	-5.1%	8/9/12
2012	2.3%	1.6%	2.3%	3/1/13
2013	-8.4%	-6.95%	-6.95%	3/1/14
2013	-5.9%	-5.9%	-5.9%	7/1/14
2014	-9.6%	-6.5%	-8.2%	3/1/15
2015	-0.9%	-1.2%	-.9%	3/1/16
2016	-2.7%	-2.7%	-2.7%	8/28/16
2016	-12.8%	-12.8%	-12.8%	3/1/17
2017	-12.6%	-12.6%	-12.6%	3/1/18
<b>2018</b>	<b>-19.0%</b>	<b>-14%</b>	<b>-19%</b>	<b>3/1/19</b>

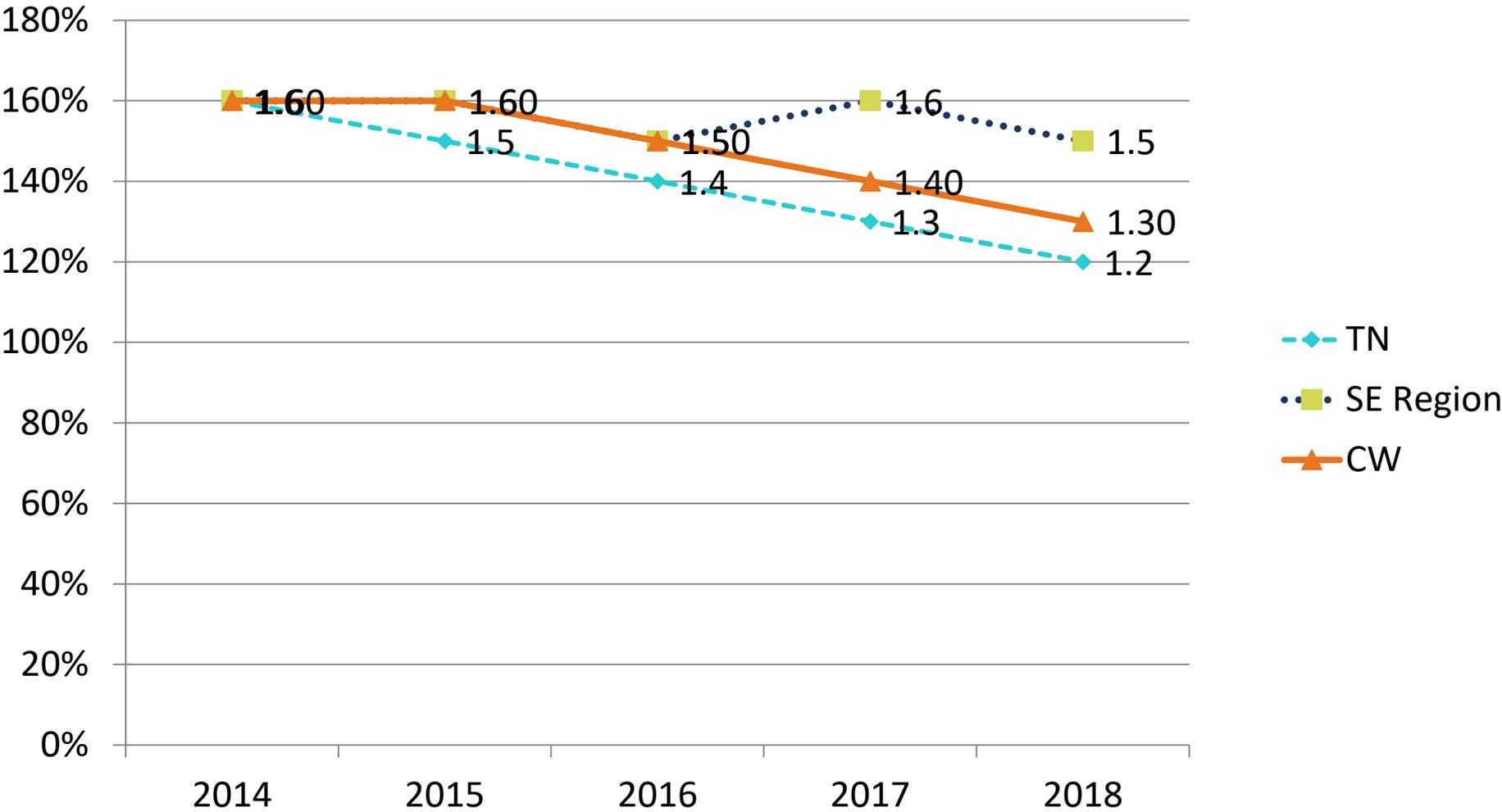
# Tennessee Voluntary Market Weighted Average Loss Cost Multiplier History



# TN WC Net Pricing Changes: Past 10 Years



# Average Reported Rate Table Comparisons

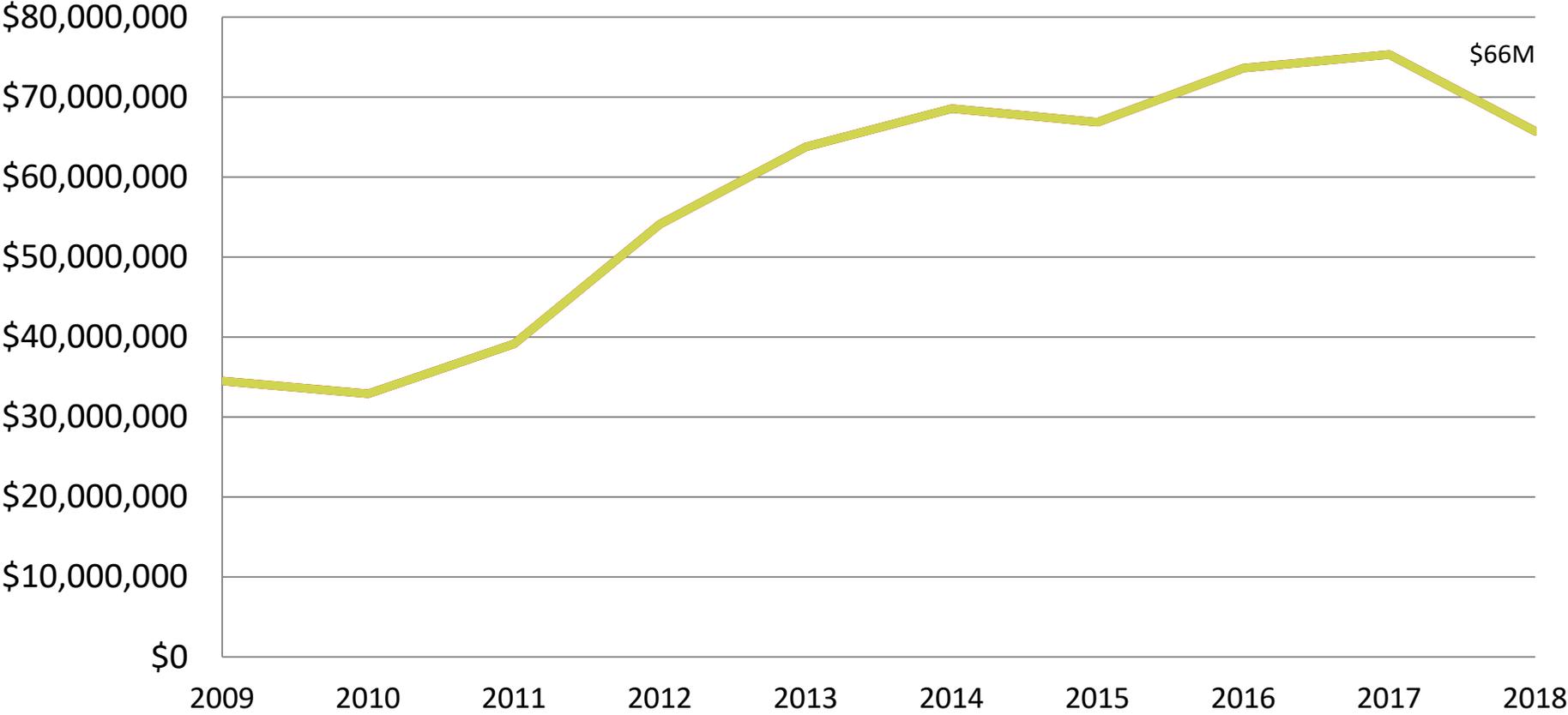


Source: NCCI's State Insight (rounded to .10)

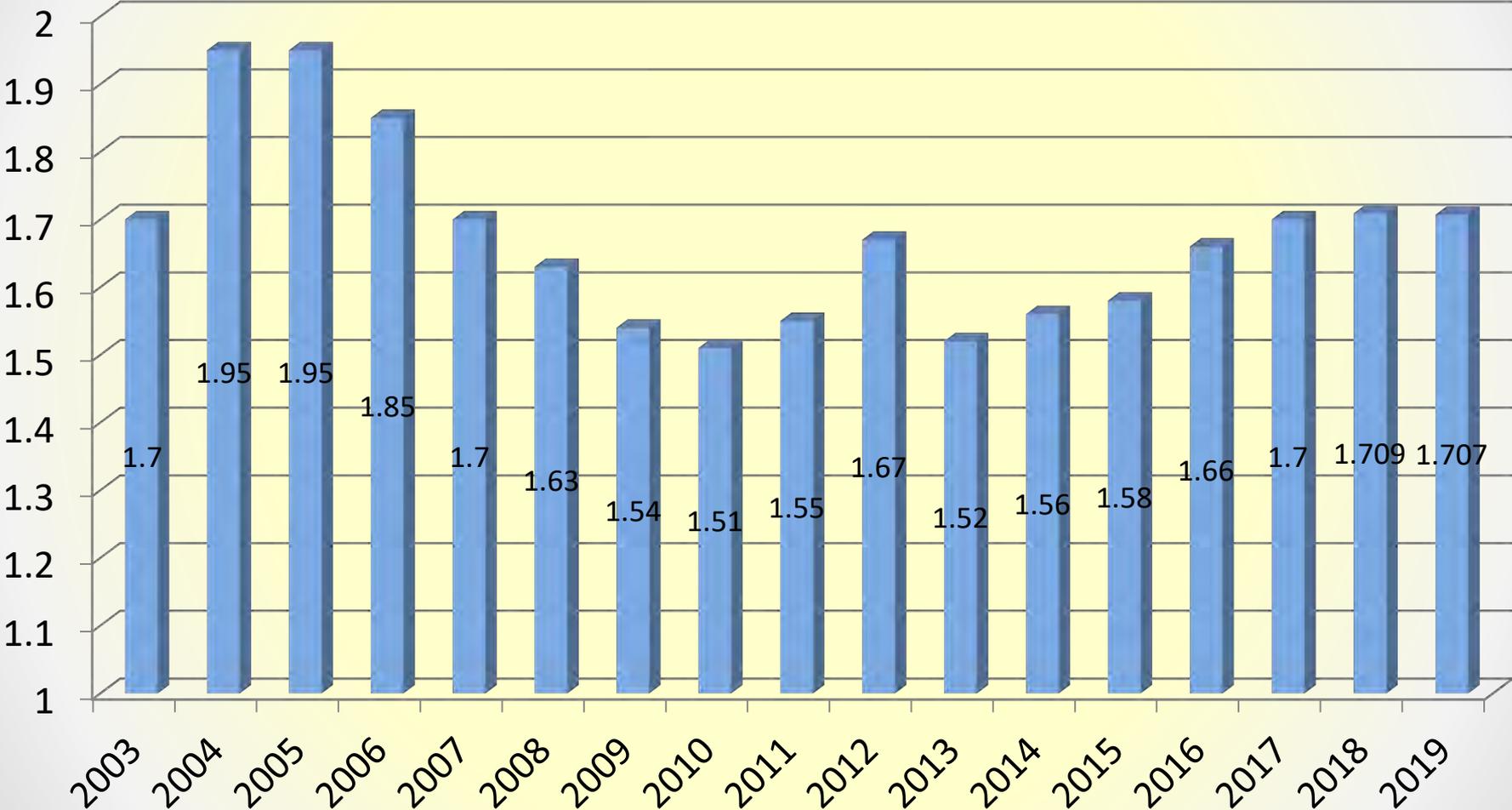
# Tennessee Workers Compensation Insurance Plan (WCIP)



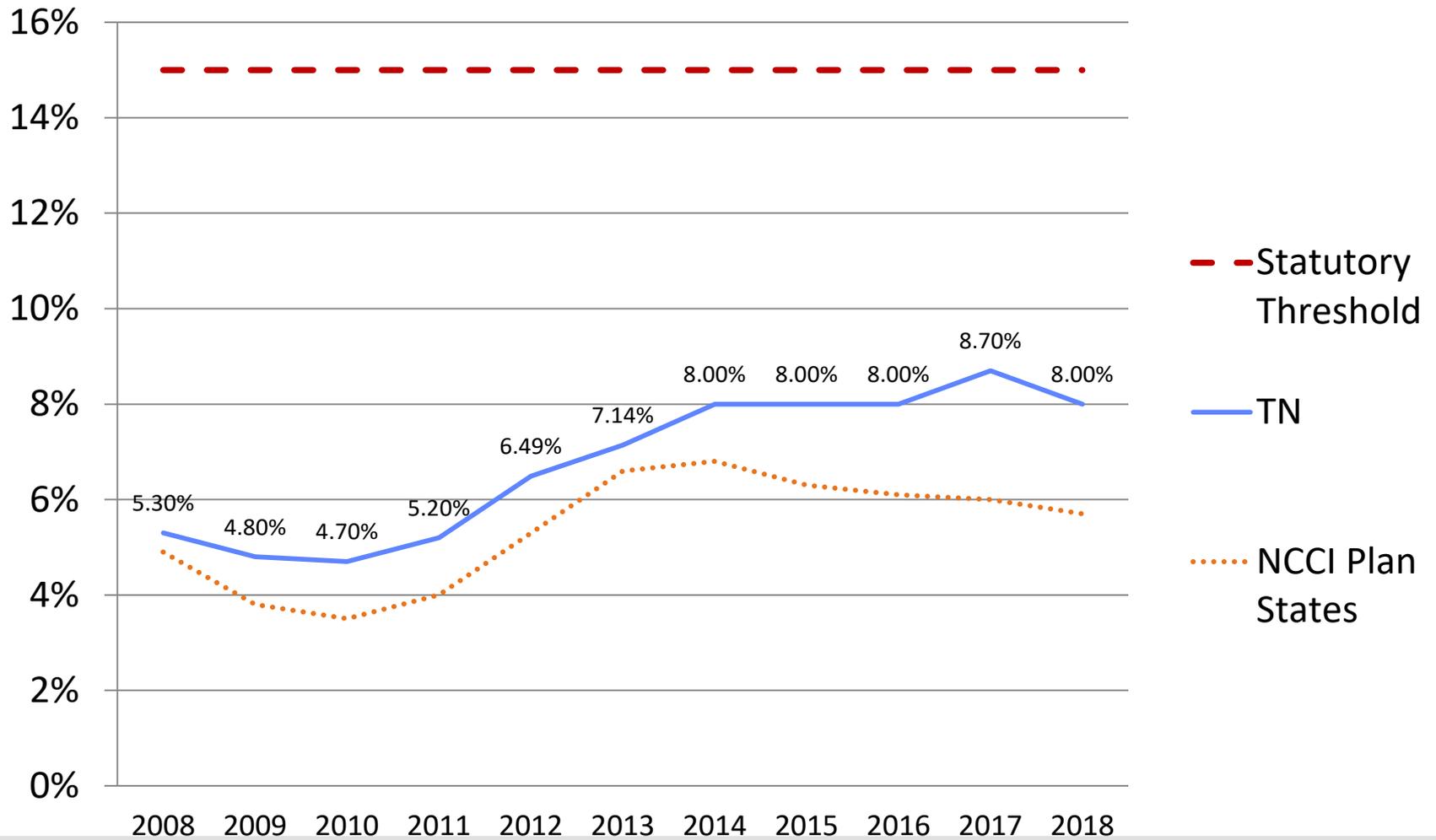
# WCIP Premium History



# TN WC Assigned Risk LCM History



# TN Assigned Risk Market Share vs. NCCI Plan States Market Shares - NAIC Direct Premium Written



# TN Department of Commerce & Insurance

## 2017/18 Assigned Risk Depopulation Initiative

- ***BrightHorizons → Comp.***

- \$100,000 premium policies and over
- Policyholder visits providing experience modification analysis, cost containment guides, and encourage step-up
- Segment represents 12.4% of the premium in the Plan



### **POLICY DATA RESEARCH: CHANGES FROM POLICY YEAR 2017 TO 2018**

➤ TN POLICY COUNT REDUCTION RELATIVE TO COUNTRYWIDE:

**- 3%**

➤ TN PREMIUM REDUCTION RELATIVE TO COUNTRYWIDE:

**-12%**

# Change in Under \$10,000 Premium Segment

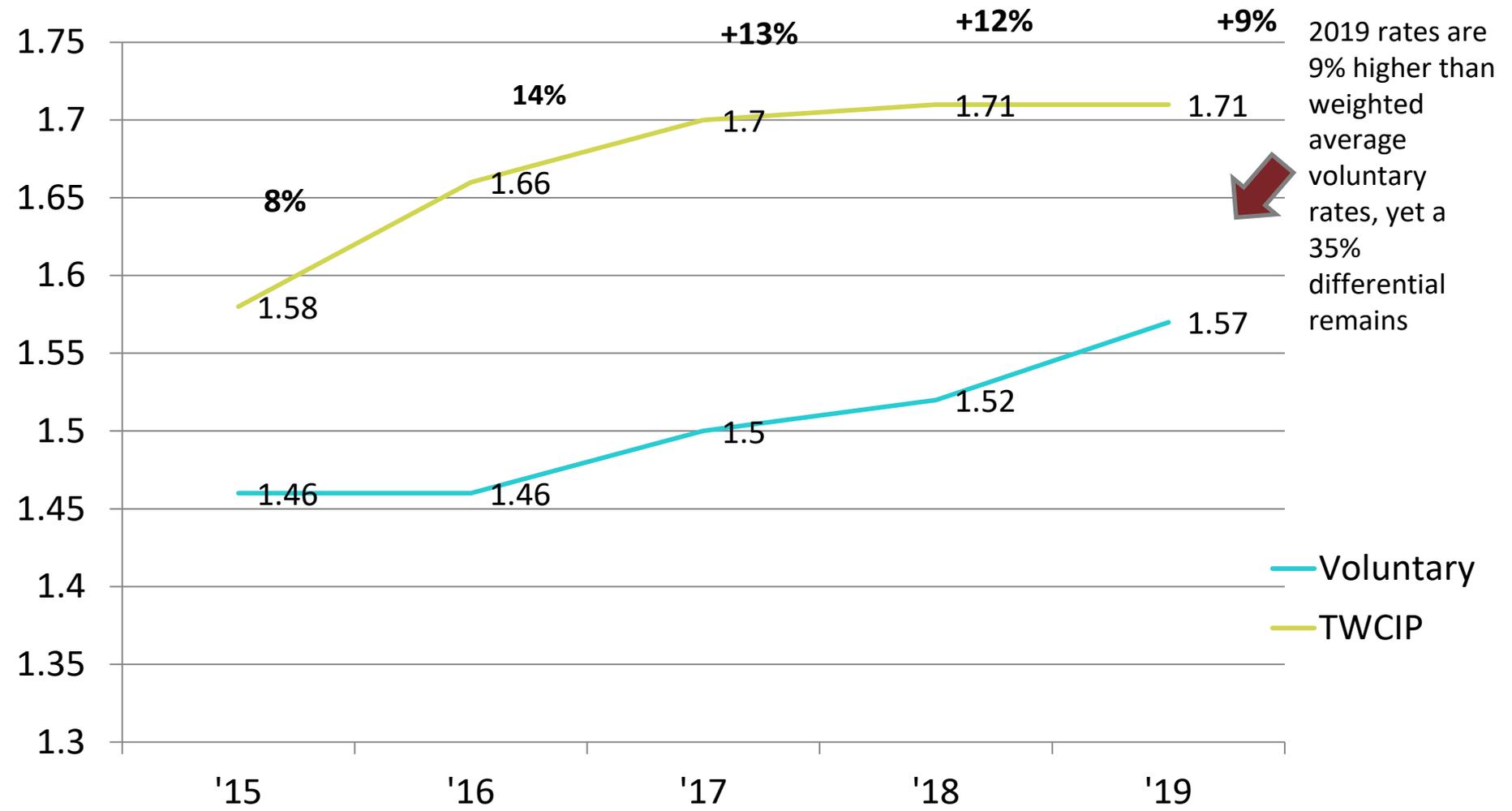
## POLICY DATA RESEARCH: CHANGES FROM POLICY YEAR 2017 TO 2018

- TN SEGMENT CHANGE RELATIVE TO COUNTRYWIDE CHANGE\*

**+12%**

\* During this period, the TN minimum premium changed from \$800 to \$1250.

# LCM History: Voluntary vs. TWCIP/WCIP



# Currently Two Active Self-Insured Groups

## Self Insured Groups

Tennessee Automotive Association

Tennessee Forestry Association

# Insolvencies

- Individual carrier data included in this section includes insolvencies of over \$1million in total losses.



No new insolvencies in 2018!

Assessment not required.

# Authorization



**Department Authorization No. 335556**



AUGUST 2020

ADVISORY COUNCIL LETTER  
WITH RECOMMENDATION TO  
COMMISSIONER OF COMMERCE AND  
INSURANCE

EXHIBIT 7

LARRY SCROGGS  
STATE OF TENNESSEE, TREASURY DEPARTMENT



STATE OF TENNESSEE

Chair: David H. Lillard,  
Jr.  
State Treasurer  
[david.lillard@tn.gov](mailto:david.lillard@tn.gov)



Ex Officio Members:  
Senator Paul Bailey  
Representative Clark Boyd  
Commissioner Hodgen Mainda  
Administrator Abbie Hudgens

Voting Members:  
Dail R. Cantrell  
Kerry Dove  
Bruce D. Fox  
Brian Hunt  
Bob Pitts  
Paul Shaffer

*Advisory Council on Workers' Compensation*

Larry Scroggs, Administrator

TREASURY DEPARTMENT  
ANDREW JACKSON BLDG., 13<sup>TH</sup> FLOOR  
502 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243  
Telephone: (615) 289-4603

Non-Voting Members:  
Joy Baker  
Jason Denton  
Sandra Fletchall  
Keith B. Graves  
John Harris  
Terry P. Horn  
Lynn Vo Lawyer  
Sam E. Murrell, III  
A. Gregory Ramos  
Misty D. Williams

October 24, 2019

The Honorable Hodgen M. Mainda, Commissioner  
Tennessee Department of Commerce & Insurance  
Davy Crockett Tower  
500 James Robertson Parkway  
Nashville, Tennessee 37243

**Re: NCCI – Law Only Workers' Compensation Voluntary Loss Cost Filing**

Dear Commissioner Mainda:

On August 27, 2019, the *National Council on Compensation Insurance* (NCCI) submitted its Law Only Filing, with a proposed effective date of March 1, 2020. The NCCI proposed an overall decrease in loss cost in the state voluntary workers' compensation insurance market of -9.5%. While the change in loss cost varies depending on the employer's classification, the average changes in the five industry groups are: Manufacturing, -8.6%; Contracting, -11.2%; Office and Clerical, -7.9%; Goods and Services, -9.1%; and Miscellaneous, -10.0%. Following receipt of the filing from your office, copies of the filing were distributed to members of the Advisory Council on Workers' Compensation for review.

Subsequently, on October 3, 2019, NCCI provided the Advisory Council with a medical fee schedule impact statement, noting that workers' compensation medical fee schedule changes that became effective September 10, 2019 were not available at the time of the NCCI loss cost filing, and that the changes could impact its filing calculations.

The Advisory Council met on Thursday, October 10, 2019, to consider the filing as required by Tennessee Code Annotated § 50-6-402(b). The Advisory Council first received comments from Dan Cunningham, director and actuary of NCCI relative to the effect of the medical fee schedule changes. Mr. Cunningham also made additional comments concerning the loss cost filing. He concluded that the medical fee schedule changes necessitated a modification of NCCI's loss cost filing projection by +1.5%, resulting in an amended loss cost filing of -8.2%. The Advisory Council next received comments from Ms. Mary Jean King of *By the Numbers Actuarial Consulting, Inc.* (BYNAC), consulting actuary to the Advisory Council, and from Mr. Chris Burkhalter of *The Burkhalter Group* (TBG), consulting actuary to the Department of Commerce & Insurance.

Ms. King of BYNAC stated at the outset of her presentation that BYNAC initially reviewed and evaluated NCCI's original proposed decrease of -9.5% for the Tennessee voluntary workers' compensation insurance market, and that it had been reasonably calculated in accordance with actuarial standards of practice considering the two year period relied upon by NCCI in reaching its calculation of a -9.5% decrease. Ms. King also indicated that the proposed change by NCCI of +1.5% due to the modified medical fee schedules was likewise reasonably calculated in accordance with actuarial standards of practice. BYNAC reviewed paid as well as paid + case development and experience for policy years 2013 through 2017 in addition to the 2016 and 2017 policy years underlying the filing in order to test the assumptions of NCCI in selecting the data and development methods for review. In Ms. King's opinion a longer experience period of at least four years is preferable for the filing indication. Using the four year period, BYNAC's experience indication for the voluntary loss cost level is -5.4%, compared to NCCI's -9.5%, before factoring in the medical fee schedule change. After considering the fee schedule change, Ms. King stated that BYNAC's experience indication for the voluntary loss cost level is -4.0%, compared to the NCCI adjusted filing calculation of -8.2%.

Mr. Burkhalter of TBG also spoke to the Advisory Council concerning its review of the NCCI filing and stated the original NCCI proposed decrease of -9.5% was actuarially sound based on the anticipated market conditions considering the two year period used by NCCI in its calculations. He agreed that the adjusted -8.2% filing number was also actuarially sound and in accordance in actuarial standards of practice. However, Mr. Burkhalter said TBG had used a five year average in arriving at its own overall indication of -5.3%, based on the original NCCI filing of -9.5%, and that with the NCCI modification to -8.2%, TBG's experience indication resulted in a -3.9% voluntary loss cost level.

During his comments, Mr. Cunningham of NCCI had indicated policy years 2016 and 2017 better measure the Tennessee market conditions. Mr. Cunningham said a longer evaluation period could be considered whenever there is volatility in the period utilized. In response to questions by the Advisory Council, Ms. King stated the difference between the NCCI and BYNAC projections was due to trend selection. She agreed the trend is currently indicating lower claim frequency and lower costs but that a longer evaluation period would provide a better measure. Mr. Burkhalter pointed to an increase in medical severity of claims in the last two years as a reason he also considered a longer evaluation period appropriate.

After consideration of the presentations by the three actuaries, the voting members of the Advisory Council in attendance unanimously approved a motion by member Bob Pitts, seconded by member Bruce Fox, to recommend that the Department of Commerce & Insurance adopt a -4.0% loss cost decrease factor rather than the -8.2% proposed by NCCI.

This written comment and recommendation fulfills the statutory responsibility of the Advisory Council on Workers' Compensation concerning the NCCI Law Only Tennessee Voluntary Loss Cost Filing proposed to be effective March 1, 2020.

If you have any questions or need additional information, please contact me at 615-741-2956 or email me at [David.Lillard@tn.gov](mailto:David.Lillard@tn.gov).

Sincerely yours,



David H. Lillard, Jr.  
State Treasurer and Chairman  
Advisory Council on Workers' Compensation

cc: Honorable Bill Lee, Governor of Tennessee  
Honorable Randy McNally, Lieutenant Governor and Speaker of the Senate  
Honorable Cameron Sexton, Speaker of the House of Representatives  
Honorable Russell Humphrey, Chief Clerk of the Senate  
Honorable Tammy Letzler, Chief Clerk of the House  
Rick Nicholson, Chief of Staff, Office of Lt. Governor Randy McNally  
Scott Gilmer, Chief of Staff, Office of Speaker Cameron Sexton  
Members of the Advisory Council