

CLM LEADING OUT LOUD: WORKERS' COMPENSATION

HOW HAS COVID-19 AFFECTED WORKERS' COMPENSATION? WHAT STRATEGIES ARE BEING USED IN AND OUT OF THE COURTROOM TO ACHIEVE APPROPRIATE OUTCOMES? AND WHAT TECHNOLOGIES WILL BE MOST INFLUENTIAL?

HOW HAS THE PANDEMIC CHANGED WORKERS' COMPENSATION FROM YOUR PERSPECTIVE? ARE THESE CHANGES PERMANENT OR TEMPORARY?

PORTER LESLIE, CEO, AMETROS:

From my perspective, the pandemic revealed a level of resilience within the workers' compensation industry as parties on both the defense and plaintiff sides of claims found new ways to manage claims and, related to our company, settle cases.

In terms of medical treatment, we saw advancements, as well. Our mission is to help injured workers with their health care after they settle their claims, and we saw a large increase in telehealth usage and virtual consultations as well as mail-order medications and equipment. Telehealth visits increased about 50x per month during the height of the pandemic. This shift will likely remain, as even today about 15-20% of all visits are now being conducted virtually.

JAMES J. BIRCH, PARTNER, ROLFES HENRY CO., LPA: The increased use and availability of virtual conferencing and telemedicine are two major changes that have impacted

the workers' compensation industry in response to the pandemic. We are seeing both medical visits and legal proceedings being held online or telephonically. The ease and increased efficiency of communications created by these technologies is a game changer and is here to stay.

There has also been an increase in the percentage of indemnity cases during the past year, likely due the number of workplace injuries going down in 2020 because of high unemployment rates and the increase in employees working virtually. As people return to work, these numbers will adjust, but it will be interesting to see if they ever go back to pre-2020 levels, as it is likely that many workers will stay working remotely.

ARE WORKERS' COMPENSATION PLAINTIFFS ENGAGING ANY NEW STRATEGIES WHEN IT COMES TO CONTESTED CLAIMS?

JAMES J. BIRCH, PARTNER, ROLFES HENRY CO., LPA: Not surprisingly, there has been a focus on health care-related claims due to COVID-19 on the plaintiffs' side this past year. Generally, COVID-19 workers' compensation claims are inexpensive, as most infected

individuals recover without the need for costly medical care or time off from work. However, a small percentage of COVID-19 claims are complex, particularly those involving patients with preexisting medical conditions. These cases may require extended hospitalizations and can cost employers substantially more money.

According to industry estimates, only about a quarter of COVID-19 workers' compensation claims that are currently submitted are accepted. Denials are made for various reasons, including a lack of diagnosis or symptoms, or the fact that some claimants have been working from home. Plaintiffs' bars have pushed back and pressed numerous states to enact laws allowing employees to submit COVID-19 claims alleging workplace exposure more easily. Some states even created laws that provide workers who contract COVID-19 with the rebuttable presumption that the disease was contracted during the course and scope of employment. Employers have challenged these laws in court with some success on the grounds that they are unconstitutional.

WHAT ARE SOME DEFENSE STRATEGIES IN OR OUT OF THE COURTROOM THAT ARE BEING USED TO ACHIEVE APPROPRIATE OUTCOMES?

PORTER LESLIE, CEO, AMETROS: We have continued to see great traction in both defense and plaintiffs' side partners offering professional administration services to make sure

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the injured worker is taken care of after settlement. Often, injured workers' concerns about leaving the workers' compensation system and managing their own medical care and Medicare reporting can keep them from settling. We are now seeing a growing trend of carriers and self-insured employers as well as plaintiffs' attorneys offering the service on all settlements that involve future medical needs.

JAMES J. BIRCH, PARTNER, ROLFES HENRY CO., LPA: With fewer new claims in 2020, claims administrators and attorneys had the opportunity to concentrate on closing existing claims. For claims in litigation, trial dates were often pushed back due to the inability to panel juries. This presented the opportunity to settle claims and avoid the larger fees associated with trial. Our firm provides an exit strategy for all workers' compensation cases to our clients with the most economical manner to handle each particular case, and we were able to successfully follow through on these predetermined exit strategies during the pandemic.

WHICH TECHNOLOGY DO YOU THINK WILL HAVE THE BIGGEST IMPACT ON THE WORKERS' COMPENSATION INDUSTRY OVER THE NEXT 5-10 YEARS?

JAMES J. BIRCH, PARTNER, ROLFES HENRY CO., LPA: With regard to employee safety, wearable technologies will have a major impact on workers' compensation over the next decade. Employers will be able to monitor employees' physical activities and locations while also measuring workplace conditions such as movement, light, humidity, temperature, and other environmental conditions. Smart technology, such as artificial intelligence, will also have a huge effect on cost containment in the workers' compensation industry. Employers, insurance companies, and law firms will be able to automate many of the typical manual workers' compensation processes.

PORTER LESLIE, CEO, AMETROS:

Some of the biggest trends we see revolve around data and automation. Ametros has leveraged automation to streamline our work and do more with less time and errors, thereby focusing human efforts on the most valuable projects. Artificial intelligence can also help our industry more easily find trends in our data so we can collectively make better informed decisions. Data connectivity and transparency also continue to grow, and the connectivity of electronic medical records is leading to better communication, care, and outcomes for injured workers.

IF THERE WAS ONE PROBLEM YOU COULD SOLVE IN WORKERS' COMPENSATION WITH THE SNAP OF YOUR FINGERS, WHAT WOULD IT BE?

PORTER LESLIE, CEO, AMETROS: Workers' compensation is an industry that is often overlooked, which is likely due to a lack of knowledge about it and the opportunities that exist within it. Streamlining and sharing information at conferences like CLM is a great start. There also is a need for greater talent recruitment, succession planning, and knowledge transfers to take place. A group called The Transitions, of which I am happy to be a part of, is chipping away at that problem but there is still lots of work to do.

JAMES J. BIRCH, PARTNER, ROLFES HENRY CO., LPA: All employers need to have a well-defined plan for communicating with injured employees, which they put into action as soon as there is even the potential for a workers' compensation claim to be made. A large percentage of employees who contact a workers' compensation attorney do so because of their employer's failure to communicate properly. The importance of quality communications with the employee cannot be overstated, and even makes a difference in the outcome of claims where plaintiffs' counsel is involved. ■



PORTER LESLIE, CEO of Ametros.
pleslie@ametros.com



JAMES J. BIRCH, Partner at Rolfes Henry Co., LPA.
jbirch@rolfeshenry.com

