



The Workers' Compensation
Law Seminar

What the Heck is the Second Injury Fund?

Presented by

Jon Bergman & Amanda Rutherford
Assistant Attorneys General

What is the SIF?

- Statutory creation
- Two avenues of funding
 - Injuries causing death
 - Payments for insufficient funds

Elements of a Fund Claim

- First qualifying injury
- Second qualifying injury
- Industrial loss that exceeds scheduled losses for first and second qualifying injuries

First Qualifying Injury

- Must occur prior to alleged second qualifying injury
 - First and second qualifying losses cannot arise bilaterally and simultaneously out of a single occurrence
- Need not be work related
- Can plead more than one first qualifying injury

First Qualifying Injury (continued)

- Limited to scheduled members listed in section 85.64
 - Only hand, arm, foot, leg and eye are listed
- Iowa Supreme Court has deemed this an inclusive list, meaning omissions of other scheduled body parts (such as fingers/toes) was intentional and such unlisted body parts do not qualify for Fund benefits
- **Under this rationale, it is the Fund's position that shoulders are not qualifying injuries under the new law as amended**

First Qualifying Injury (continued)

- Limited to scheduled members listed in section 85.64
 - Under same rationale, unscheduled injuries are not qualifying, even if they affect a scheduled member
 - But injury to scheduled member may still be qualifying if it occurs at same time as unscheduled injury, so long as scheduled member injury was a separate, quantifiable loss

First Qualifying Injury (continued)

- Must be a permanent loss
 - An impairment rating, without other supporting evidence, may not be enough to establish a first qualifying injury
 - However, may need to have at least a permanent impairment rating to establish a first qualifying injury (Moyer, File No. 5047944)

Second Qualifying Injury

- Must be a work-related loss
- Different scheduled member than first qualifying injury
 - A bilateral injury can still qualify even though it affects the same member alleged as first qualifying injury
 - But bilateral injury causing claimant to be PTD under section 85.34(2)(s) is employer's sole responsibility

Second Qualifying Injury (continued)

- Must be limited to a scheduled member
 - If second qualifying injury to scheduled member occurred at the same time as an unscheduled injury, the employer is fully responsible
- Must be a permanent loss

Industrial Disability Against the Fund

- Think math problem: industrial disability due to combined effect of two scheduled losses *minus* credits for those losses *equals* Fund's liabilities
- Calculating credits (more math)
- No Fund liability when credits exceed industrial disability

Nuances of the Fund

- Must have established claim against the employer to bring Fund claim, either through prior adjudication or settlement
- Interest accrues from date of final agency action
- No Fund liability for penalty benefits

Nuances of the Fund (continued)

- The Fund's commencement date is first day after last date benefits are due from employer for second qualifying loss
 - Exception for PTD awards and review-reopenings
- No commutations against the Fund (even before law change)

Other Common Disputes

- Claimant carries the burden for proving a claim against the Fund
- Claimant is bound by settlements with employer, but the Fund is not
- The Fund is not responsible for payment of expert reports

Other Common Disputes (continued)

- Settling with the Fund
 - Typically closed file
 - No contributions to mediator fees
 - We can't rush your payment
- Case Load

Questions?