



# Injury Management

*Developing a Strategy for Success*



cobb strecker dunphy & zimmermann  
*Contributing to Our Partners Success*

# Discussion Facilitator

**Scott Staffon, CSP**

**Director of Risk Management**



## **Areas of Expertise:**

- ✓ **Heavy Highway**
- ✓ **Infrastructure, Bridges & Foundations**
- ✓ **Alternative Energy**
- ✓ **Specialty Construction**
- ✓ **Utilities**
- ✓ **Quality Control**
- ✓ **Micro-planning**
- ✓ **Trucking/Fleet**

# Discussion Facilitator

**Chris Poe, CSP**

**CSDZ Risk and Safety Specialist**



## **Areas of Expertise:**

- ✓ **Mining and Tunneling**
- ✓ **Infrastructure, Bridges & Foundations**
- ✓ **Alternative Energy**
- ✓ **Light Rail**
- ✓ **Utilities**
- ✓ **Electrical Transmission and Distribution**
- ✓ **Commercial & Residential Contracting**
- ✓ **Heavy Civil Construction**

# Today's Learning Objectives

- ✓ Define key strategies for success.
- ✓ Distinguish Pre-Injury management from Post-Injury management.
- ✓ Design an efficient, comprehensive strategy for managing injuries.
- ✓ Identify the individual elements and options contractors can use to develop a Pre-Injury and Post-Injury management strategy.
- ✓ Explain when an injury becomes a potential Workers' Compensation claim.
- ✓ Examine strategic partnerships to improve measurable outcomes.

# Key Strategies for Success

Important to Distinguish & Develop:

- ✓ Pre-Injury program design and set-up.
- ✓ Post-Injury implementation and expectations.

Are your program expectations clear?

- ✓ These determine a successful outcome.
- ✓ Question: *What do You Want Me to Do?*



# Understand the Difference

## **Injury Management** **Is Not Synonymous with** **Claims Management**

**Injury management can have a major impact  
on the outcome of claims management.**

# Injury vs. Claim Management

## Injury Management

- ✓ Injury occurs to employee on the project
- ✓ Supervisor notified – makes decision
- ✓ Prompt, effective response from the field
- ✓ First-aid vs. off-site medical treatment
- ✓ Incident report

## Claim Management

- ✓ 1<sup>st</sup> report of injury to insurer
- ✓ Claims professionals
- ✓ Compensability determination
- ✓ Indemnity & medical payments (PPD/TTD)
- ✓ Litigation strategy & resolution
- ✓ MMI

# **Successful Outcomes are Planned**

**You only get one chance to get it right.**

**Initial Control & Management  
or  
Constant Catch-up**





# Pre-Injury Strategies

*Program Design and Setup*



cobb strecker dunphy & zimmermann  
*Contributing to Our Partners Success*

# Pre-Injury Strategies

## Defining your internal process:

- ✓ Define Your Plan
- ✓ Written Job Descriptions
- ✓ Defined Expectations in Employee Handbook
- ✓ Timely Reporting
- ✓ Clinic Identification
- ✓ Investigation
- ✓ Creative Solutions
- ✓ Leadership & Employee Training

# What is Your Injury Management Plan?

## Basic Non-Defined

- ✓ Have a plan.....somewhere
- ✓ Supposed to's & should's
- ✓ Vague expectations
- ✓ Unclear responsibilities
- ✓ Unreliable reporting
- ✓ Info trickles in
- ✓ Lack of accountability

## Detailed & Focused

- ✓ Clear expectations & accountability
- ✓ Process-driven
- ✓ Defined communication
- ✓ Prompt, effective response
- ✓ Active involvement & participation
- ✓ Ability to forecast next steps

# Written Job & Task Descriptions

- ✓ Broad enough to identify options and opportunities to get employees back to work.
  - Does Not have to be an HR-approved document for hiring.
  - May only be part of your Return-to-Work program.
- ✓ Written employee acknowledgement.
  - Post offer and annually.
- ✓ “Alternative” work options defined.
  - Within normal routine functions of job description.
- ✓ All encompassing.
  - Flexible task assignments or rigid limitations?
- ✓ Essential functions.
  - Detail the type of normal routine functions of the job.
- ✓ Flexibility to meet the definition of routine functions of the job according to DOL guidelines.
  - 20 CFR 416.967 - Physical Exertion Requirements



# 20 CFR 416.967

## Physical Exertion Requirements

### **Sedentary Work.**

Sedentary work involves lifting no more than 10 pounds at a time...

### **Light Work.**

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds...

### **Medium Work.**

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds...

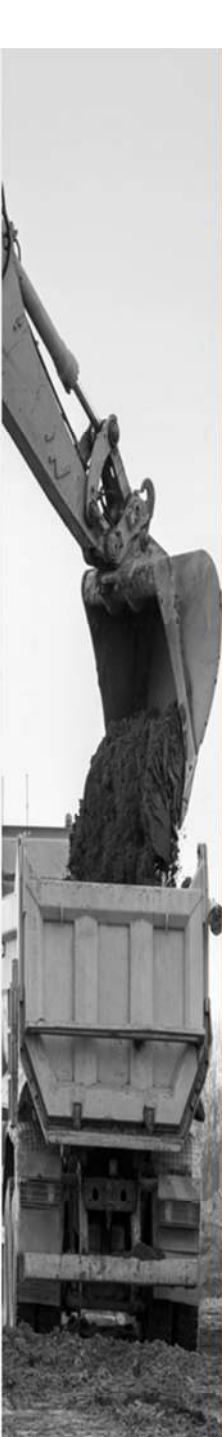
### **Heavy Work.**

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds...

### **Very Heavy Work.**

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more....





November 16, 2009

Mr. Ron C. Lewis  
Manager, Operational Excellence, Support & Reviews  
Chevron Phillips  
10001 Six Pines Drive  
Room 4118  
The Woodlands, TX 77380  
Dear Mr. Lewis:

## OSHA & Routine Job Functions

Thank you for your September 25, 2009 letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. In an effort to provide you with prompt and accurate responses, we developed and continue to refine a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping website.

**Scenario:** A contract worker sustained a dislocated left thumb during excavation work. A physician realigned the worker's thumb by reduction (i.e., manual joint manipulation). The procedure was non-operative and no prescription medication was administered. The physician released the employee for work but restricted the use of the employee's left hand for approximately two weeks. **A subsequent determination was made by the contractor's employer that this employee could perform all routine functions of his job.**

**Given this information, would this injury be characterized as a significant injury as described in 1904.7(b)(7) and thus requiring classification as a recordable injury?**

**Answer:** The scenario you presented does not meet the requirements of 1904.7(b)(7). The conditions listed under 1904.7(b)(7) are comprehensive, dislocations are not included on that list. However, reduction is not a treatment included on the first aid list under 1904.7(b)(5) and therefore it is considered medical treatment for OSHA recordkeeping purposes. **When medical treatment beyond first aid is administered the case becomes recordable.**

**Since the restriction did not affect the employees' routine functions the case does not involve restricted work.**

### 1904.7(b)(4)(iv)

***If you or a physician or other licensed health care professional recommends a work restriction, is the injury or illness automatically recordable as a "restricted work" case?***

**No,** a recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job. If the restriction from you or the physician or other licensed health care professional keeps the employee from performing one or more of his or her routine job functions or from working the full workday the injured or ill employee would otherwise have worked, the employee's work has been restricted and you must record the case.



# Example: Construction Laborer

## Construction Laborer

The construction laborer job function performs a wide variety of tasks and routine functions throughout the day to support construction activities. This position may be required to work outside in a wide variety of weather conditions, including: hot, cold, dry or wet, but also may be required to work inside, as well. The routine functions have a wide range of physical demands ranging from sedentary to very heavy physical exertion requirements. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor in 20 CFR 416.967 - Physical Exertion Requirements.

**Sedentary Work** – Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

- Administration and recordkeeping – time cards, change orders, material delivery, truck tickets, plan review/verification, scheduling, equipment rental/return, etc.
- On-site traffic control vehicle/equipment: monitoring, tracking, counting, directing, coordination.
- On-going training and education at home or work location.
  - On-the-job task and equipment training.
  - In-person and classroom safety training.
  - On-line safety training.
- Fire watch.
- Flagging and flagging tasks.
- Parts/materials/tools/equipment delivery and/or pickup – assisted lifting, no load/unload.
- Pump watch for dewatering operations.
- Spotter for vehicles and equipment – utility, overhead lines, backing/close maneuvering, etc.
- SWPPP observations.
- Utility damage prevention observations, ticket verification/update, locate requests, locate meets.

**Light Work** – Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

- Layout, verification, grading and staking.
- Housekeeping and general clean-up duties – indoors and/or outdoors.
  - Job site, yards, storage areas, office, fabrication shop, mechanic shop, other work locations.
- General material, equipment and tool inventory, tracking and control – indoors and/or outdoors.
- Rigging tasks with polyester and nylon straps.

- Site security.
- Provide main/front gate control – station at gate and provide site security.
- Inspections (random and scheduled) for day/night jobsite and building security at job sites, yards, storage areas, offices, fabrication shops, mechanic shops and other work locations.
- Vehicle and equipment inspections, compliance checks and recordkeeping.

**Medium Work** – Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

- Adjusting and cleaning tracks on equipment.
- Assist and help carpenters and other trade workers when necessary.
- Floor mounted grinder use and tasks.
- Forklift operation all classes – indoors and/or outdoors.
- Hand and power tool use – drills, sawzall, hammer drills, etc.
- Handcart use – indoors and/or outdoors.
- Material laydown and equipment storage areas: organization and inventory.
- Mixing concrete and mortar in small quantities (5-gallon bucket).
- Pressure washing: job-specific tasks, clean up, equipment, vehicles.
- Raking and spreading materials.
- Rigging tasks with chains.
- Shoveling and digging.
- Skid steer operation, inspection, maintenance.
- Torch cutting.
- Unloading/loading materials, equipment and tools.
- Vehicle and equipment preventative/scheduled maintenance.

**Heavy Work** – Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

- Concrete and mortar activities.
  - Build and place form work for concrete placement.
  - Dismantle/strip formwork after concrete placement.
  - Shovel/rake concrete during placement.
  - Move concrete placing equipment.
  - Move and place brick, block and mortar for masonry work.
  - Grouting.
  - Rubbing/brick finishing.
- Cut off saw use: concrete, asphalt, pipe, metals, etc.
- Demolition activities: sledgehammer, pry bar, cutting, debris/rubble removal, watering/dust control.

# Employee Handbook

- ✓ **Define the employee's role and responsibilities.**
  - Immediate reporting of all injuries to supervisor.
  - All injuries receive diagnosis and consultation recommendations from a doctor.
  - Return-to-work program responsibilities of employee.
  - Work assigned according to employee's job description.
  - Accountability to conform to company injury management protocols.
- ✓ **Written employee acknowledgement.**
  - Post offer and annually.

# Clinic Identification

## Develop Relationships:

- ✓ Preferred occupational medical clinics.
  - No occupational clinic available = greater necessity to educate the clinic about your RTW program and managing OSHA's expectations.
- ✓ Meet the doctors/specialists/consultants.
  - Actually sit down with the Doctor.
  - Develop a common understanding of scope of work.
  - Provide detailed job descriptions.
    - *Essential job functions and physical demands.*
  - Define your return-to-work plan – company philosophy.
- ✓ Primary contacts and reporting structure.
- ✓ Follow-up requests, reporting, other expectations.



# Define Your Expectations with the Clinic

Do you understand the clinic's treatment protocols?



Does the clinic understand  
Work Comp vs. OSHA recordability?



Are they willing to prescribe an over-the-counter  
medication vs. a prescription medication?



Does the clinic understand to call before  
administering treatment?



# Job Site Reporting Protocols

- ✓ **Supervisor's Defined Expectations for Reporting.**
  - Who is Your Immediate Off Site Point of Contact?
- ✓ **Supervisors are not Doctors.**
  - Competing priorities or interests.
  - *"Are you hurt or are you injured?"*
- ✓ **What is the Plan to get the Person First Aid or Necessary Medical Treatment?**
  - Prime – GC – Sub Expectations.
  - Points of Contact.
  - Address, Location on Site, Floor or Area.
  - Transportation Concerns.
  - Assembly Area for Rescue Services.

# Timely Reporting

## Question:

*When does an Injury actually become a claim?*

- ✓ **When the Employer is Put on Notice.**
  - **Initial Employee notification to Supervisor.**
- ✓ **Maintain Control – *Your Plan Begins Now!!***
  - **Establish boundaries and Steer Towards a Positive, Controlled Outcome.**
- ✓ **Can You Put an End to “IT” Now?**
  - **Onsite Medical Triage.**
  - **Offsite Diagnosis and Consultations.**

# Non-Work Related Injuries

- Is an employer under any obligation to accommodate an non-work related injury?
  - ✓ **Work restrictions from a non-work related injury?**
- What happens when someone re-injures, aggravates or exacerbates a non-work related injury?
- Non-work related injury protocol.
  - ✓ **Medical clearance before allowing an employee to return to work with no restrictions.**
  - ✓ **Procedure to inform the treating physician of normal, routine job functions.**

# Creative Solutions

Question: *How are You Going to Be Successful Regardless of Severity?*

- ✓ 3<sup>rd</sup> party assessments and endorsements of:
  - Job and Task Descriptions, Routine/Essential Functions.
  - Return-to Work Options.
- ✓ Post-offer functional testing.
  - WorkSTEPS.
- ✓ Occupational triage services.
  - WorkPartners.
- ✓ Wage continuation.
  - Must define Expectations, Activity and Engagement.
  - Sedentary Work, Online Training, Non-profits.



# Contemporaneous Medical Opinion

- ✓ OSHA considers a contemporaneous medical opinion that is best documented, best reasoned and most persuasive as the most authoritative.
- ✓ OSHA intends that for two or more conflicting recommendations to be considered contemporaneous, they must be conducted within a time frame so that an injury or illness can be evaluated when the signs or symptoms are in the same stage of development, same degree of severity, and this can be viewed in a similar context for analysis.

**QUESTION:** If a physician or other licensed health care professional recommends medical treatment, days away from work or restricted work activity as a result of a work-related injury or illness can the employer decline to record the case based on a contemporaneous second provider's opinion that the recommended medical treatment, days away from work or work restriction are unnecessary, if the employer believes the second opinion is more authoritative?

**YES.** However, once medical treatment is provided for a work-related injury or illness, or days away from work or work restriction have occurred, the case is recordable. If there are conflicting contemporaneous recommendations regarding medical treatment, or the need for days away from work or restricted work activity, but the medical treatment is not actually provided and no days away from work or days of days of work restriction have occurred, the employer may determine which recommendation is the most authoritative and record on that basis. In the case of prescription medications, OSHA considers that medical treatment is provided once a prescription is issued.



# Leadership Training

- ✓ Define the Roles in Injury Management.
- ✓ Immediate Up-the-Chain Communication.
- ✓ First Aid Alternatives.
- ✓ Medical Triage.
- ✓ Documentation and Interviews.
- ✓ Clinic Strategies.
- ✓ “Recovery” Assignments.
  - Options & Opportunities for Work.
- ✓ Return-to-Work Strategies.
  - Medical Restriction through MMI



# Post-Injury Strategies

*Implementation and Expectations*



cobb strecker dunphy & zimmermann  
Contributing to Our Partners Success

# Post-Injury Strategies

- ✓ **Managing Initial Report of Injury**
- ✓ **Communication**
- ✓ **Dr. Visit**
- ✓ **Injury becomes a Claim**
- ✓ **Red Flags**



# Not Everything is First Aid...



**Field Leadership are Not Doctors!**

# Injury Becomes a Claim

- ✓ **1<sup>st</sup> Report must be submitted to insurance.**
- ✓ **Difference between Work Comp & OSHA:**
  - **WC: 3 - 7 days waiting period before indemnity.**
  - **OSHA: 1 day before lost-time.**
- ✓ **Establish the treatment plan**
  - **MMI is the goal...what will it take to get there and when?**
- ✓ **Define key players in the claim process.**
  - **Communication strategy, specific roles, expectations.**
- ✓ **Continuous involvement = aggressive management.**



# Managing Initial Report of Injury

- ✓ Employee tells supervisor = company is on notice.
  - **Do Not ignore your employee!**
- ✓ Keep small events small.
  - **First-Aid – Can you treat on-site?**
    - *There are limitations.....not everything is first aid.*
- ✓ Can “IT” be put-to-rest? *(Soft Tissue, Joint, Muscle, Back, Knee...)*
  - **Onsite medical triage – WorkPartners.**
  - **Off-site medical diagnosis & consultation.**
- ✓ Document – Document – Document!!

# Communication

How are you getting information out of the field to begin your post-injury strategy?

- ✓ Immediate reporting is critical.
- ✓ Field supervision are not doctors.
  - Report incident up-the-ladder.
  - All events receive attention.
- ✓ You get the plan started.
  - Be involved at the beginning.
- ✓ Gather initial facts: *is it work related, is the injury suspect?*
- ✓ Understand claim team's procedures.
  - What do they need to be successful?
  - What do they need from you?

# Doctor Visit

- ✓ **Diagnosis and consultation is not OSHA recordable.**
  - **Manage your OSHA 300 Log recordability.**
- ✓ **Occupational clinic.**
  - **Maintain control of the process.**
- ✓ **Medical restriction is not synonymous with a work restriction.**
- ✓ **Written & acknowledged job & task descriptions.**
  - **3<sup>rd</sup> party assessments and evaluations lend credibility.**
- ✓ **Post-Incident Work Plan**
  - **Return-To-Work is not synonymous with light-duty, restrictions or transfer.**

# Red Flags

- ✓ Monday morning injury.
- ✓ Just hired and just injured.
- ✓ Previous “bad” history with insurer.
- ✓ Goes to ER/hospital on the weekend.
- ✓ Layoff right around the corner.
- ✓ No witnesses.
- ✓ No communication following injury.
- ✓ Misalignment of injury and event.
- ✓ Injury begins to “wander”.
- ✓ Understands Workers’ Comp vocabulary.
- ✓ Refuses to see recommended treating physician.
- ✓ “*Lawyers Up*” right away.





# **Strategic Partnerships**

*Develop Relationships for Long-Term Success*



**cobb strecker dunphy & zimmermann**  
*Contributing to Our Partners Success*

# Agent/Broker Partnership

Agent/Broker is your advocate who assists in resolving complex claim issues:

- ✓ Establishing claim mgt. protocols with Carriers/TPS's.
  - Holding them accountable for on-going day-to-day management.
- ✓ Clearly define available options based on state-specific laws.
  - EX – limitations or restrictions on employee vs. employer directed care.
- ✓ On-going dialog, status and expectations on open claims issues.
- ✓ Developing strategies to resolve or close-out open claims.
- ✓ Assist with identifying legal or other resources on complicated claims – *attorneys, IME's, surveillance, etc.*
- ✓ Reviewing accuracy of reserves.
- ✓ Coordinating claim reviews.

# Employer Responsibilities

The employer is a critical part of pro-actively managing a claim:

- ✓ Report claims timely.
  - Statutory Time Requirements.
  - Don't Need all the Details to Report to Insurer.
- ✓ If not sure that a claim needs to be reported.
  - Report as a “Incident Only” or “Let Rest”.
  - Discuss with your agent/broker.
- ✓ Keep open line of communication.
  - Injured Employee.
  - Insurer.
  - Agent/Broker.
- ✓ Work closely together with legal or other resources on complicated claims.

# Insurance Company Partnership

Insurer claim adjuster is your advocate who manages the day-to-day activities on open claims:

- ✓ Proactively follows the progress of open claims
- ✓ Utilize management tools to resolve claims
  - 3<sup>rd</sup> party investigators.
  - Investigative resources.
  - Case management nurses.
- ✓ Update employer and Agent on claim status changes
  - Participate in claim review meetings.
- ✓ Initiate when appropriate
  - Legal.





# Impact on EMR



**cobb strecker dunphy & zimmermann**  
*Contributing to Our Partners Success*

# Managing the EMR Impact

<b><u>Actual Losses</u></b> <b>Expected Losses</b>
---

- ✓ EMR can be Managed.
- ✓ Medical Only – *no lost wages (indemnity).*
  - Receive 70% Discount in EMR Calculation.
- ✓ Indemnity – *compensation for lost wages*
  - 3-day Rule.
- ✓ Wage Continuation Paid by Employer.
- ✓ Loss Triangle – *how a claim develops over time.*

# Claim Development Loss Triangle

Incurred Expense can Raise and Fall  
*Paid + Reserves*

<b>Policy Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>2014</b>	<b>402,222</b>	<b>531,963</b>	<b>812,100</b>	<b>1,312,493</b>
<b>2015</b>		<b>196,120</b>	<b>320,786</b>	<b>160,215</b>
<b>2016</b>			<b>428,236</b>	<b>568,921</b>
<b>2017</b>				<b>96,582</b>



**In Closing...**



**cobb strecker dunphy & zimmermann**  
*Contributing to Our Partners Success*



# Thank You!



# Questions?