



# **Workers' Compensation Insurance**

A Guide through the Origins and Development of Louisiana's Workers Comp

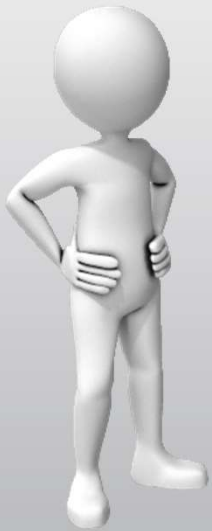


## About me...

Dawn Boniol, CPFI, Manager Claims Support, Compliance & Internal Quality Control



# Workers' Compensation 101



Origins

The Origins of Workers' Compensation

Claims

Claims Happen

Discussion

Workers' Compensation Discussion



# The Origins of Workers' Compensation





# Common Law

## *Employer Negligent*

- Sue employer
- Prove in court



## *Burden Borne by Employee*

- Costly
- Courts slow and pro-employer
- Employee could not afford medical care
- Rarely could work again



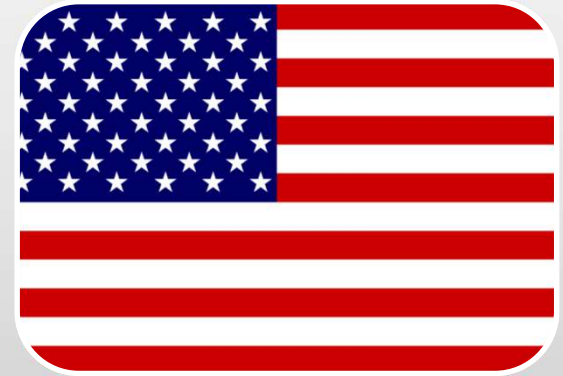
# 1<sup>st</sup> U.S. Workers Comp Insurance



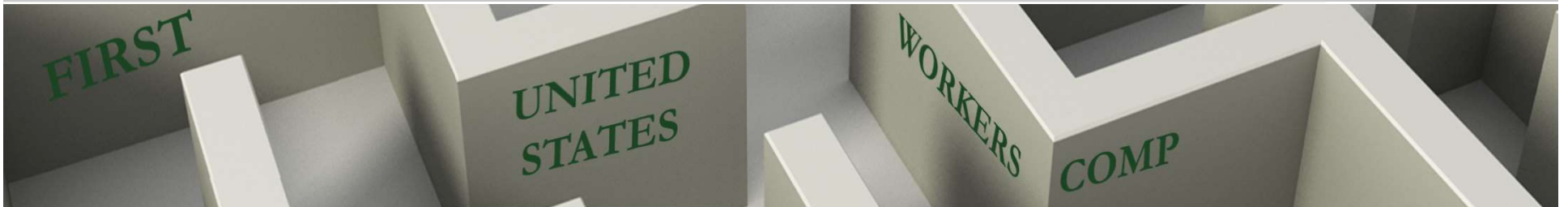
Wisconsin 1911



Louisiana 1914

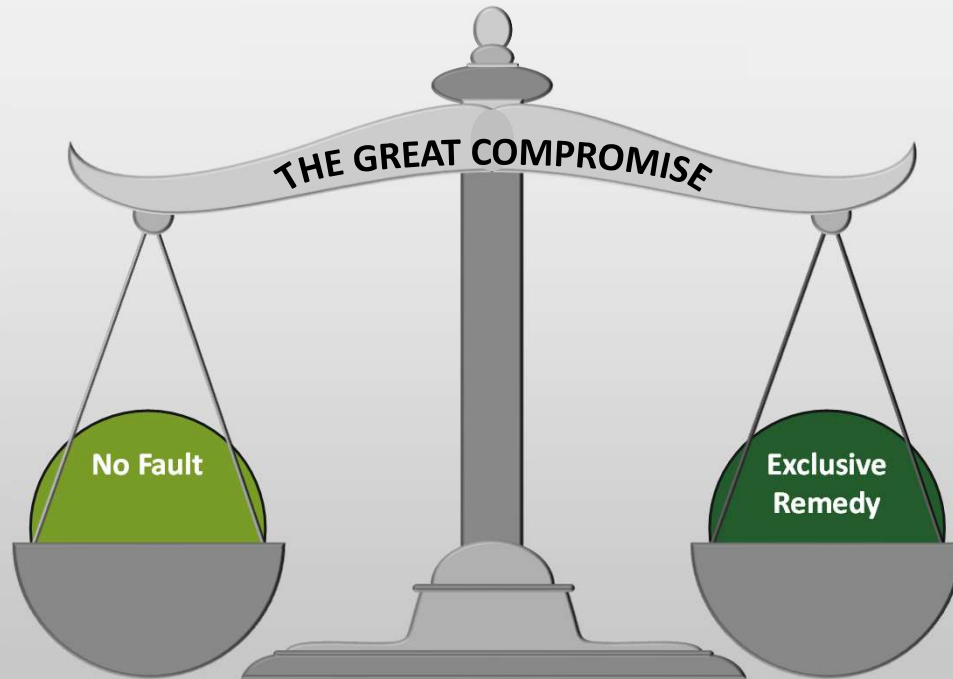


Most States by  
1920's



# 1<sup>st</sup> U.S. Workers Comp Insurance

No fault in  
exchange  
for...



- ✓ Exclusive Remedy
- ✓ Limited Benefits
- ✓ Consistency and predictability





# Claims Happen



LOUISIANA

WORKERS

COMP

INSURANCE

## WORKPLACE INJURIES BY THE NUMBERS



Every 7 seconds... a worker is injured on the job.

per hour

510

per day

12,600

per week

88,500

per year

4.6  
million



104,000,000

Production days lost due to  
work-related injuries in 2017.

# WORKPLACE INJURIES BY THE NUMBERS



## Top 3 Workplace Injury Events Resulting in Lost Work Days

Overexertion  
(lifting, etc.)



- Lifting or lowering
- Repetitive motions



Contact with  
Objects/Equipt.



- Struck by or against object or equipment
- Caught in or compressed by equipment or objects
- Struck, caught or crushed in collapsing structure, equipment or material

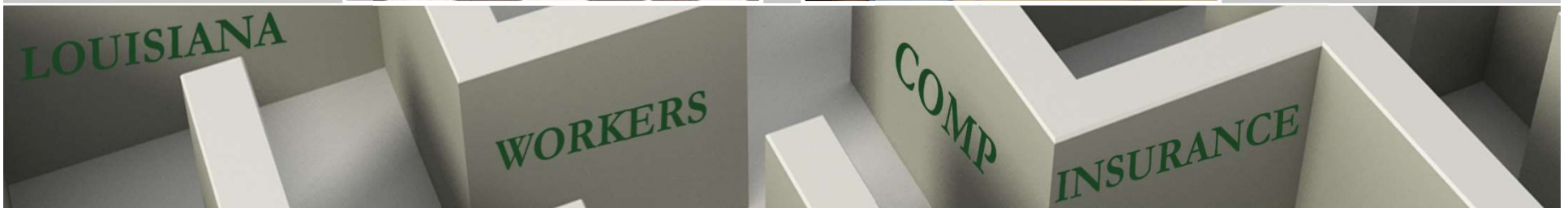
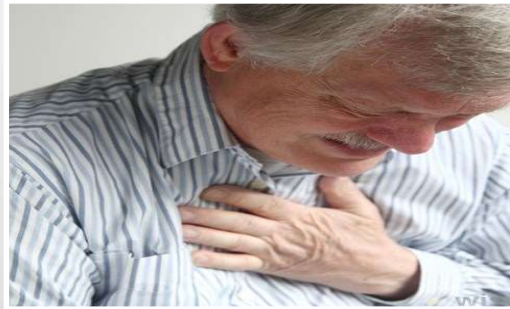


Slips, Trips and  
Falls



- Falls to a lower level
- Falls on the same level

# What is an accident?



# Definition of an Accident

- **R.S.23:1021 provides the definition for accident.**
  - ❖ An unexpected or unforeseen actual, precipitous event
  - ❖ Happening suddenly or violently
  - ❖ With or without human fault
  - ❖ Directly producing at the time objective findings of an injury
  - ❖ Which is more than simply a gradual deterioration or progressive degeneration.





# Course and Scope



**Time and Place**



**Engaged in Performance of  
Work Duties**





# Arising out of Employment

## ➤ Focus on risk

- ❖ Risk greater because of employment?
- ❖ Engaged in employer's business?
- ❖ Did employer benefit?

Employer  
Benefit

Employee  
Benefit



## WAGE BENEFITS

### 2020-21 State, Longshore and Jones Act Benefits Comparison

Type of Benefit	State	Longshore
Determination of AWW (Average Weekly Wage)	4 weeks gross earnings (prior to accident date; includes overtime)	52 weeks gross earnings including overtime, if employed with employer for substantially the whole year prior to accident (or another employer performing the same job). If not, then wages of a similar employee who has worked for employer for substantially the whole year. If similar employee is not available, then information which best reflects employee's wage-earning capacity at time of accident.
Compensation Rate	66-2/3% of AWW subject to maximum and minimum compensation rate	66-2/3% of AWW subject to maximum and minimum compensation rate.
Minimum Weekly Compensation Rate	\$188.00 per week (tax free) effective 09/01/20 - 08/31/21	\$408.18 per week (tax free) effective 10/01/20 – 09/30/21
Maximum Weekly Compensation Rate	\$705.00 per week (tax free) effective 09/01/20 – 08/31/21	\$1632.70 per week (tax free) effective 10/01/20 – 09/30/21
Waiting Period	7 days (payable after 2 weeks) of disability)	3 days (payable after 14 days of disability)

# Scope – the parties

## *Covered*

- Direct Employees
- Joint Employees  
*Proportionate Obligation*
- Borrowed Employees
- Undocumented Workers  
*NOT RECOMMENDED*
- Sub-contractors  
*Statutory Employers*

## *Not Covered*

- Volunteers
- Domestic Workers  
*Unless Endorsed*
- Independent Contractors  
*Not Engaged in Manual Labor*



UNITED STATES

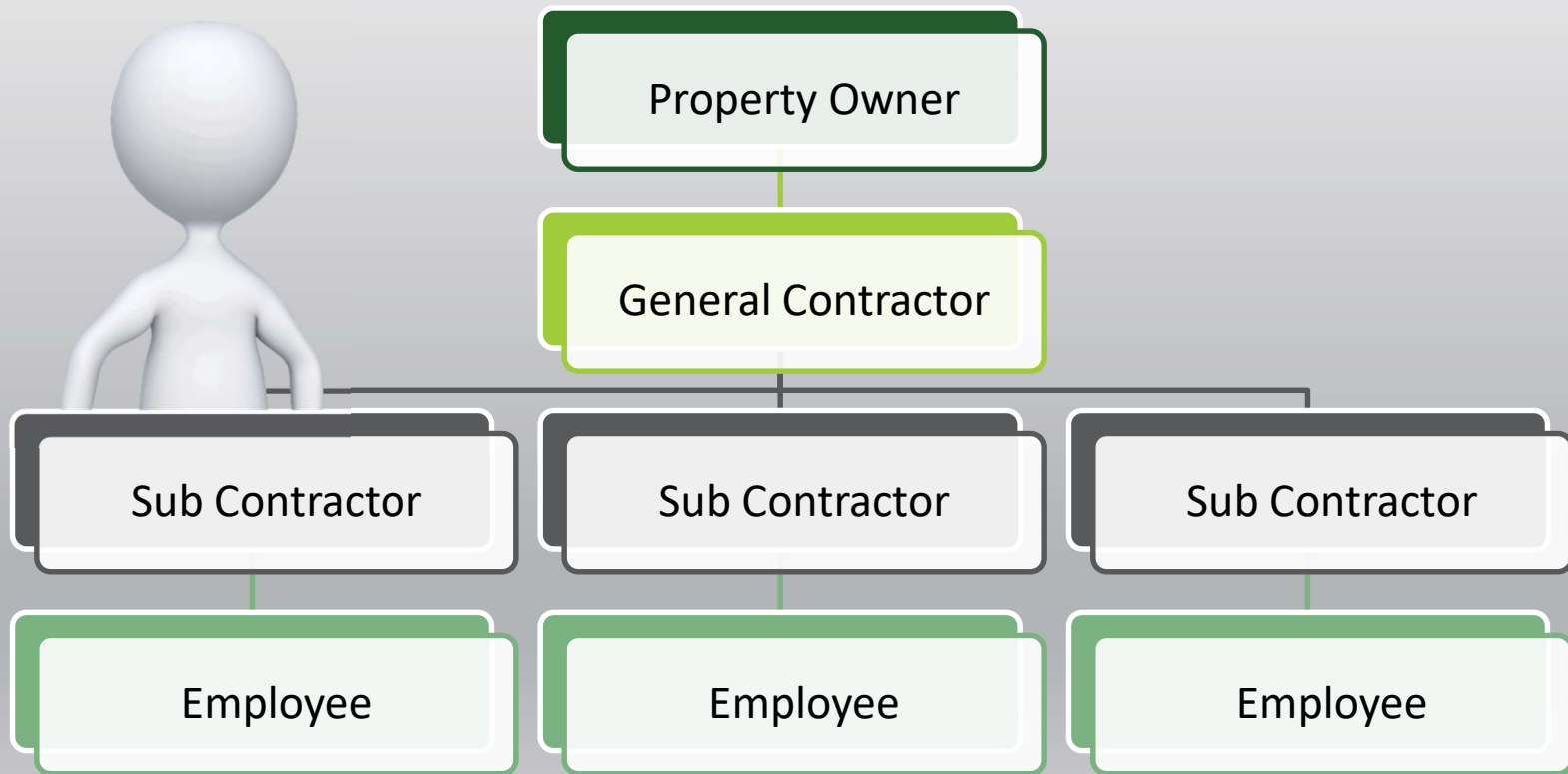
WORKERS

COMP

INSURANCE

# Employment Relationships

## *Statutory Employment*



# Workers' Compensation Discussion



# Related Defenses

*R.S. 23:1031(E)*

An injury by accident is not considered to have arisen out of employment if it arose out of a dispute with another person or employee over matters unrelated to the injured employee's employment.





# Physical Aggressor

*R.S. 23:1081*

Compensation is denied for an injury caused to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor.



# Horseplay

*R.S. 23:1031(D)*

An injury by accident is not considered to have arisen out of employment if the injured employee was involved in horseplay at the time of the injury.



## To & from work

The general rule is that traveling to and from work is not considered to be within the course and scope of employment.

Exceptions ??



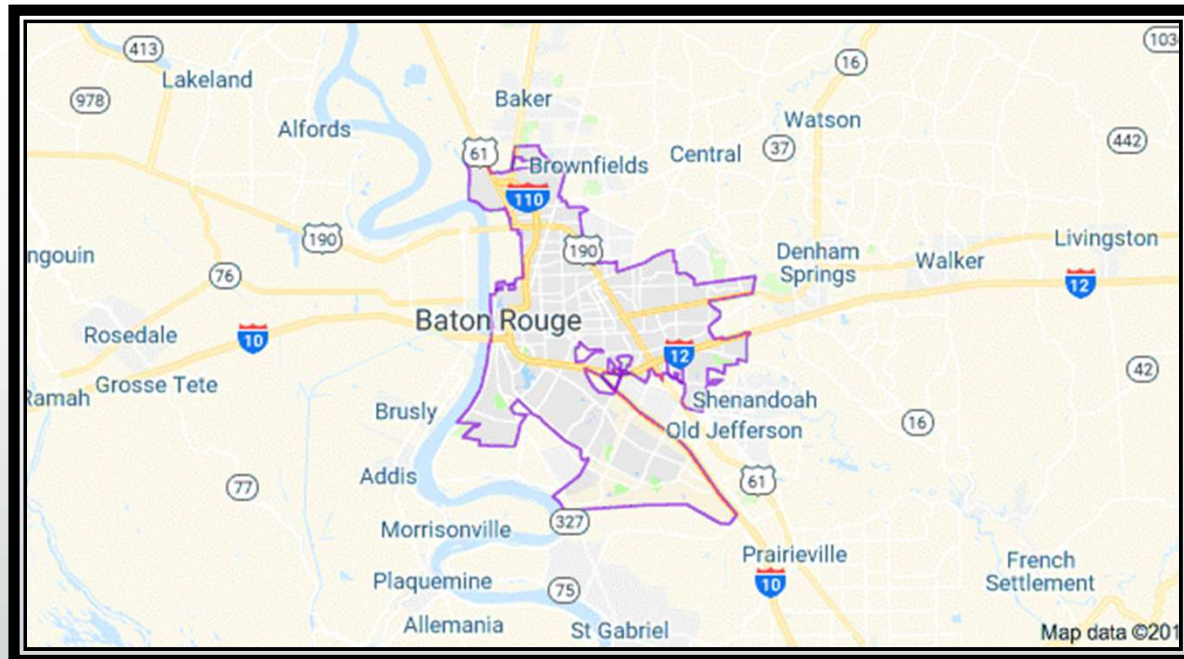
# Threshold Doctrine



The threshold doctrine allows for compensability when an injury occurs adjacent to the employer's premises in a hazardous area.



The threshold doctrine generally involves a special risk attributable to the location of the work premises that is different from the risk to which the general traveling public is exposed or that is more aggravated in the area adjacent to the employer's premises than elsewhere.



# Deviation

Deviation from course and scope occurs when an employee steps out of the course and scope of employment and is engaged on a personal mission.





## Social Activities

Accidents occurring during social activities are compensable if the employer requires participation or derives direct benefits from the activity



# Heart Attack/Stroke

A heart related or perivascular injury is not considered to arise out of and in the course and scope of employment unless it is demonstrated by clear and convincing evidence that:

- ❑ The physical work stress was extraordinary and unusual in comparison to the stress or exertion experienced by the average employee in that occupation; and
- ❑ The physical work stress or exertion and not some other cause of stress or preexisting condition was a predominant and major cause of the heart related or perivascular injury.



## **Intoxication**

No compensation is allowed for an injury caused by the injured employee's intoxication at the time of the injury.

# No Written & Promulgated Drug Policy

☐ *If the employer requests a drug screen—*

☒ The results are inadmissible.

☐ *If hospital or clinic performs test for “medical purposes only”—*

☒ The results are likely inadmissible. There is no chain of custody. There is likely no confirmatory test.



# No Written & Promulgated Drug Policy

- ❑ *Evidence of non-prescribed controlled substances under Schedule I, II, III, IV and V shall result in a presumption of intoxication.*
- ❑ *Initial and confirmatory test levels:*

Analyses Ordered: 01001 - DRUG SCREEN: 10 PANEL

DRUG	RESULT	QUANT	SCREEN CUTOFF	GC/MS CUTOFF
THC (Cannabinoids)				
Carboxy - THC	POSITIVE	54	50 ng/mL	15 ng/mL
Amphetamines	NEGATIVE		1000 ng/mL	500 ng/mL
Cocaine Metabolites				
Benzoylcegonine	POSITIVE	6360	300 ng/mL	150 ng/mL
Opiates	NEGATIVE		2000 ng/mL	2000 ng/mL
Phencyclidine	NEGATIVE		25 ng/mL	25 ng/mL
Barbiturates	NEGATIVE		300 ng/mL	200 ng/mL
Benzodiazepines	NEGATIVE		300 ng/mL	200 ng/mL
Propoxyphene	NEGATIVE		300 ng/mL	200 ng/mL
Methadone	NEGATIVE		300 ng/mL	200 ng/mL
Methaqualone	NEGATIVE		300 ng/mL	200 ng/mL





**Refusal to submit to drug and alcohol testing immediately after the job accident shall result in a presumption of intoxication.**

# Occupational Disease



Occupational disease means only that disease which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease



Degenerative disc disease, spinal stenosis, arthritis of any type, mental illness and heart related or perivascular disease are specifically excluded as occupational diseases



# What have the courts recognized as occupational diseases?

- ☐ Carpal Tunnel Syndrome
- ☐ Silicosis
- ☐ Asbestosis
- ☐ Pseudomonas Aeruginosa
- ☐ Thoracic Outlet Syndrome
- ☐ Asthma
- ☐ Epicondylitis (Tennis Elbow)

# Occupational Disease

The last causative employer is responsible for benefits:

- ❑ As to the claimant, all causative employers are solitarily liable and the claimant can seek benefits from any
- ❑ A previous employer who is paying benefits can seek indemnification from the last causative employer

# Questions? Comments?



**Dawn Boniol**

*Manager of Claims Support Unit, Compliance & Internal Quality Control*

[Dawn.Boniol@stonetrustinsurance.com](mailto:Dawn.Boniol@stonetrustinsurance.com)

Direct (225) 201-8015