

New York State Workers Compensation Costs

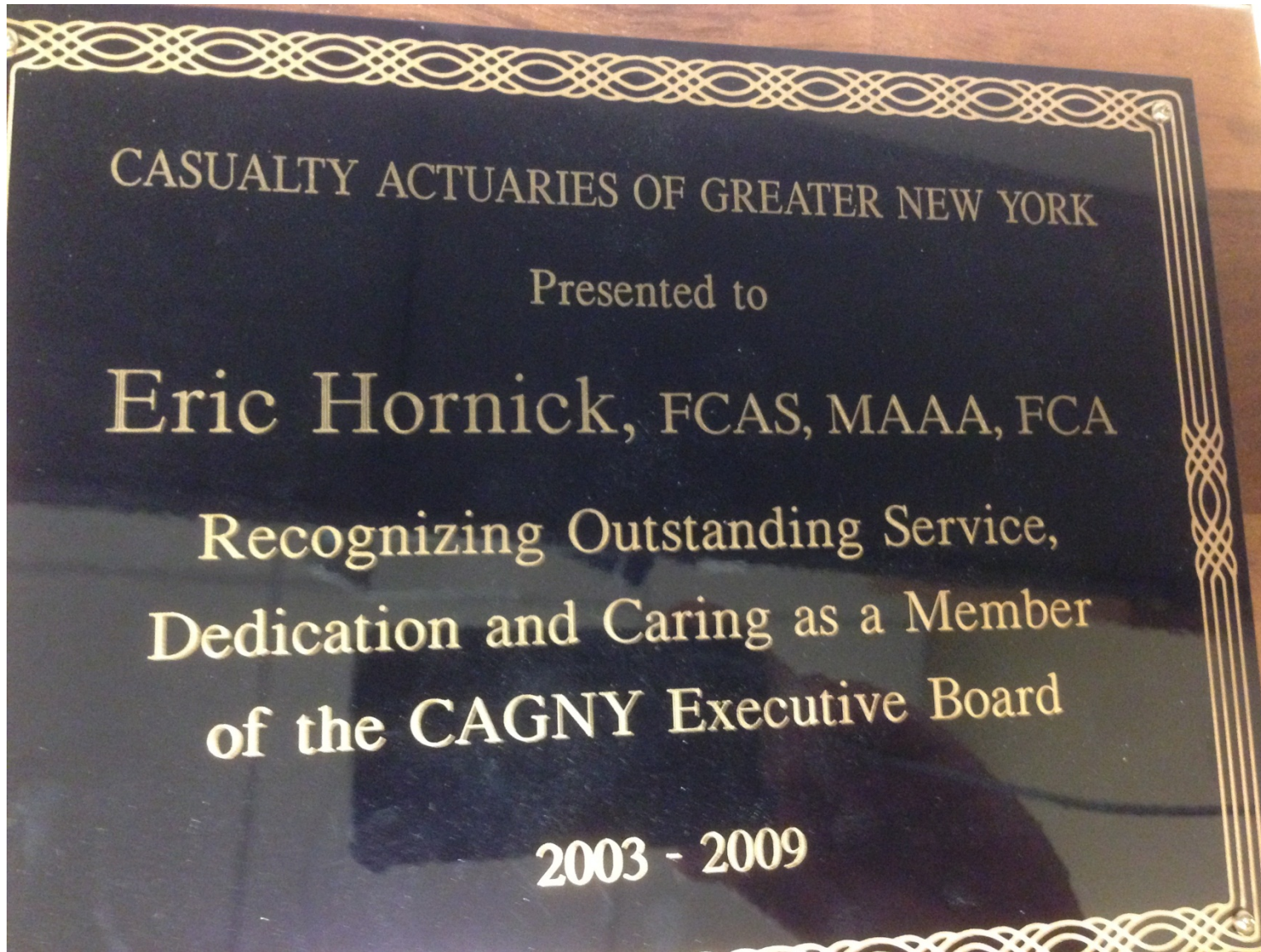
June 11, 2014

Eric J. Hornick, FCAS, MAAA, FCA

About Me

- FCAS, MAAA, FCA
- 26 Years of Experience, including 9 with Oliver Wyman
 - OW: Primarily large employers who retain risk
 - Previously: ISO, Centre Solutions (Centre Re), Guy Carpenter
- Workers Compensation and All Other Lines
- New York and North East
- Representative Clients in New York
 - Roswell Park Cancer Institute
 - Delaware North
 - Lord & Taylor/Saks
 - NewsCorp/21st Century Fox

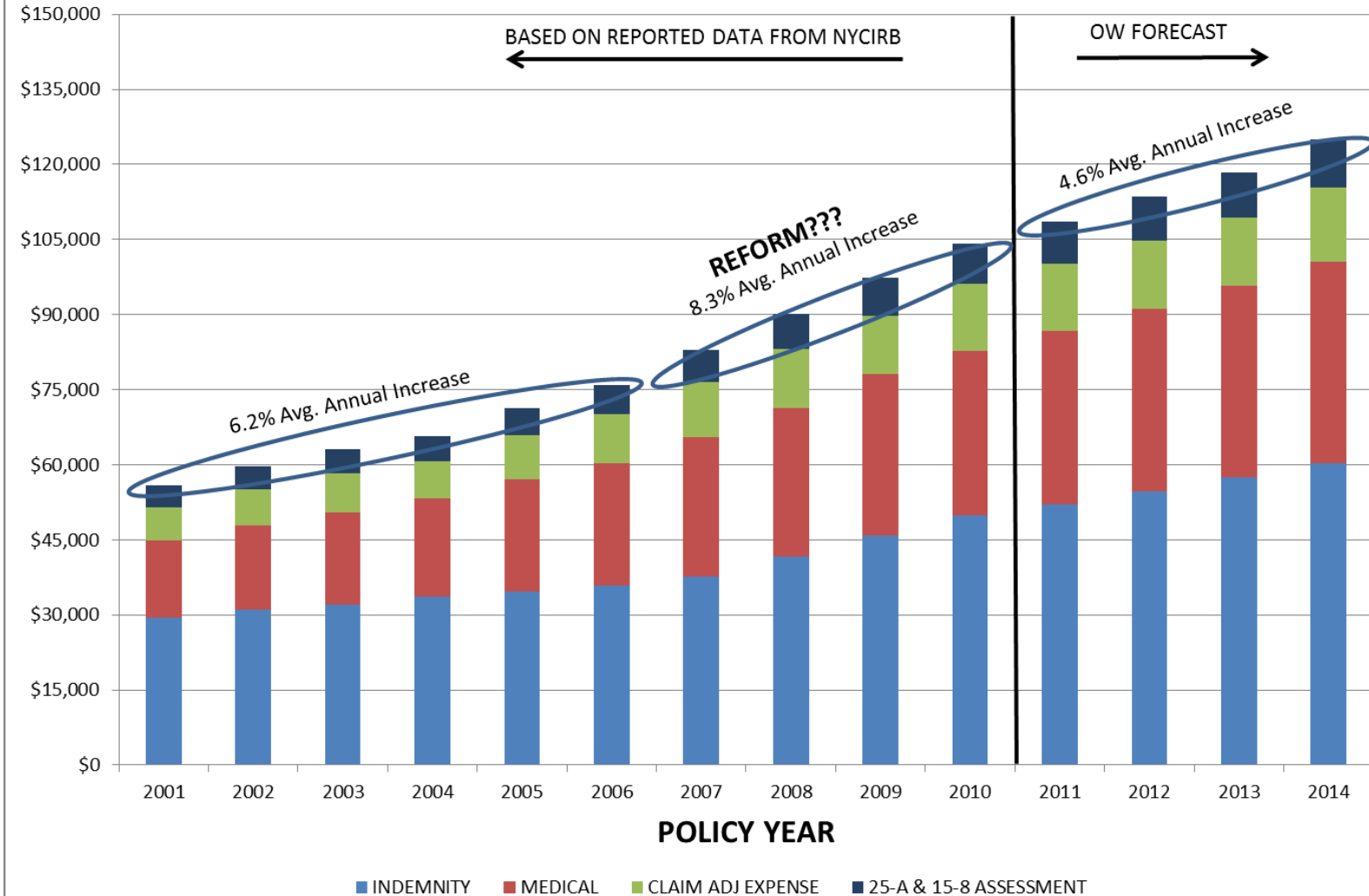
But What am I Most Proud About?



What Are We Going to Discuss?

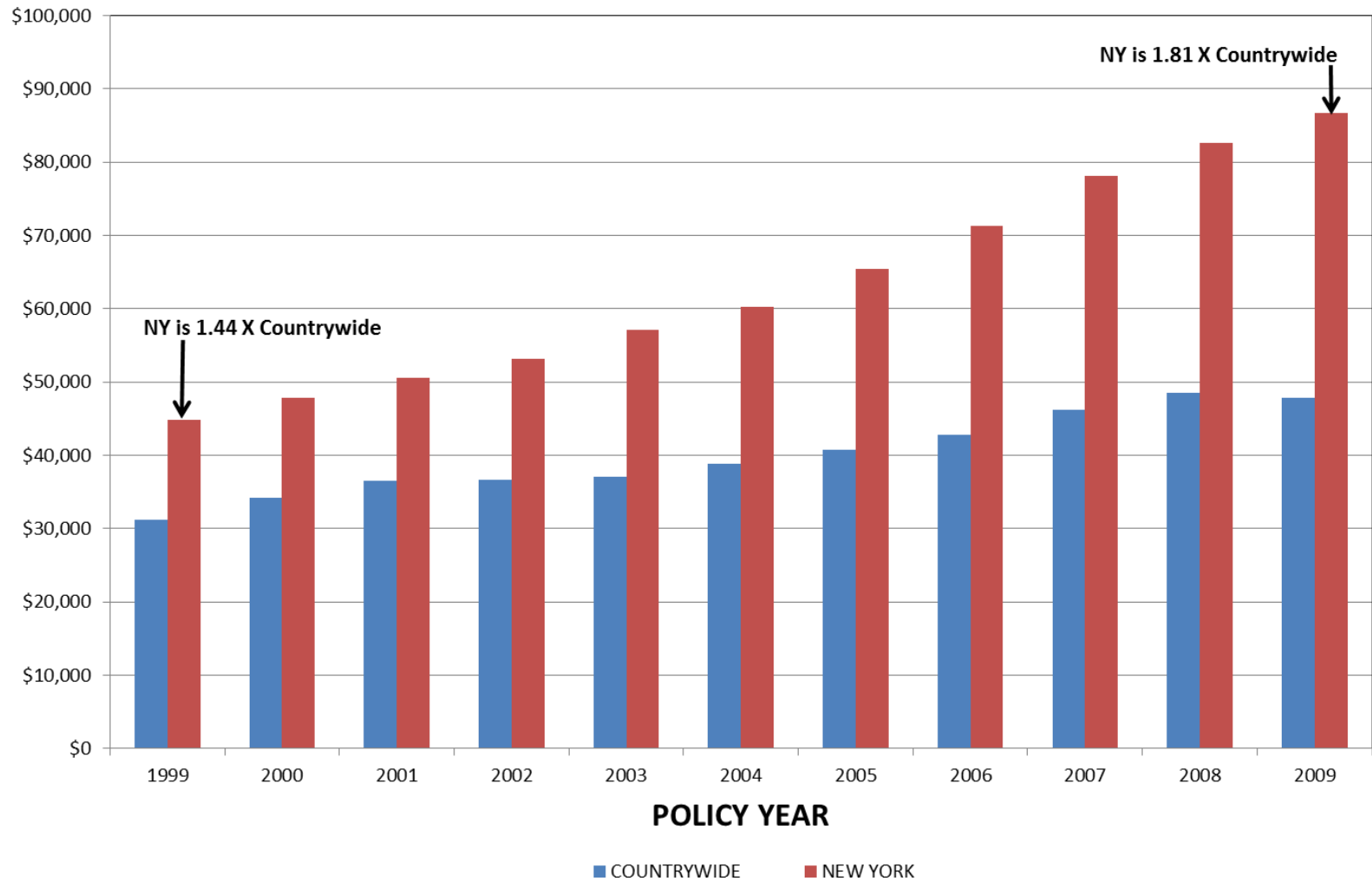
AVERAGE LOST TIME CLAIM COST IN NEW YORK

Medical, Indemnity, Claim Expense, Assessments



LOST TIME CLAIM COST: MEDICAL AND INDEMNITY BENEFITS

New York and Countrywide Data



Approved Lost Cost Changes by Effective Date in New York

Effective Date	Approved Change	Cumulative Change
9/30/2007	0.00%	0.00%
10/1/2007	-18.40%	-18.40%
10/1/2008	-6.40%	-23.62%
10/1/2009	4.50%	-20.19%
10/1/2010	7.70%	-14.04%
10/1/2011	9.10%	-6.22%
10/1/2012	0.00%	-6.22%
10/1/2013	9.50%	2.69%

← Actuarial Indication: **+15% to +30%**
 ← Actuarial Indication: **+15% to +25%**

As of 10/1/2013, Loss Costs in New York are greater than they were prior to the 2007 law changes.

Loss Cost: Indemnity + Medical + Claim Adjustment Expense

Outline of Discussion

- Conditions Prior to 2007
- 2007 Law
 - The Changes
 - Expected Savings
 - What Actually Happened
- Assessments
- 2013 Law
- Where We Are Today

Conditions Prior to 2007

Conditions Prior to 2007

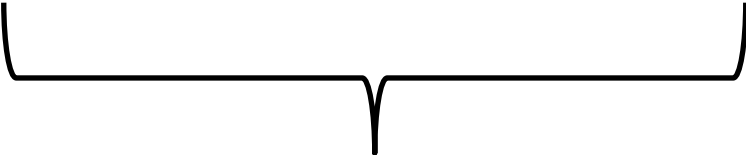
- Maximum weekly benefit at \$400 per week since July 1, 1992
- Minimum weekly benefit at \$40 per week since July 1, 1992
- Lost time claim frequency declined by ~20% from 2001 through 2006
Similar to countrywide experience
- Material growth to average lost time claim costs
 - ~6% average annual growth from 1999-2006
 - 60% increase to average lost time claim cost in New York
 - Compares to 37% increase countrywide

Conditions Prior to 2007

- Reasons for Lost Time Claim Cost Growth

Permanent partial claims are about 10 times more expensive than the average cost of other lost time claims in New York

	Death	PT	TT	
Cost	325,000	725,000	7,500	← per 100,000 employees
Frequency	3	3	600	



PP
\$125,000 (2005 - 2010 Avg.)

This compares to a countrywide PP cost of \$50,000

Conditions Prior to 2007

- Permanent partial claim costs were increasing at a rate greater than the other lost time claims

AVERAGE ANNUAL LOST TIME CLAIM COST GROWTH 2001 through 2007

	All Except Permanent Partial	All Lost Time	Permanent Partials Only
Indemnity	2.4%	1.8%	4.1%
Medical	2.9%	9.3%	10.1%

Conditions Prior to 2007

- The relative portion of permanent partial claims were increasing in New York, similar, but at a slightly greater rate than countrywide

NEW YORK CLAIM FREQUENCY per 100,000 workers				COUNTRYWIDE CLAIM FREQUENCY per 100,000 workers			
Policy Year	Total Lost Time	Permanent Partial	PP %	Policy Year	Total Lost Time	Permanent Partial	PP %
2001	1220	494	40%	2001	1,233	423	34%
2002	1140	455	40%	2002	1,203	422	35%
2003	1106	438	40%	2003	1,154	423	37%
2004	1026	416	41%	2004	1,093	385	35%
2005	985	413	42%	2005	1,057	383	36%
2006	948	419	44%	2006	1,025	378	37%
2007	941	445	47%	2007	969	373	38%
2008	927	488	53%	2008	885	361	41%
2009	939	515	55%	2009	878	331	38%
2010	986	548	56%	2010			

- New York claims are much more expensive
- Shift from lower cost claims to higher cost permanent partial claims

Conditions Prior to 2007

- Why are permanent partial claims in New York so expensive to begin with?
 - Scheduled PP claims provide for benefits for specific durations

Maximum Possible Compensation Scheduled Loss of Use Awards	
Member Lost	Weeks of Compensation
Arm	312
Leg	288
Hand	244
Foot	205
Eye	160
Thumb	75
First Finger	46
Second Finger	30
Third Finger	25
Fourth Finger	15
Great Toe	38
Other Toe	16

- Scheduled PP claims had not been the problem

Conditions Prior to 2007

- Non-Scheduled PP claims were for “duration of disability”
 - Duration of Disability = Lifetime benefits
 - Indemnity costs of non-scheduled PPD claims represented:
 - 71% of indemnity permanent partial costs
 - 39% of all indemnity workers compensation costs
 - 25% of TOTAL workers compensation benefits (Medical and Indemnity)
 - The indemnity cost component of non-scheduled permanent partial claims in New York accounted for 25% of TOTAL New York workers compensation benefit costs

Conditions Prior to 2007

- Why were medical costs for permanent partial claims increasing at a higher rate than for other claims?
- Why was the portion of permanent partial claims increasing?

Answers to both questions

- Number of awards and the average disability rating were increasing
- Medical services were being utilized by claimants to achieve a non-scheduled award or to increase the disability rating
- Opinion of some claim administrators was that this activity was likely done to partially offset the low maximum weekly benefit of \$400

Conditions Prior to 2007

- Aggregate Trust Fund
 - Applied only to death and permanent total disability claims
 - Applied only to private carriers
 - Not to self-insureds
 - Not to State Insurance Fund
 - Present value of benefits deposited into ATF
 - ATF pays claim or settles
 - Impacted small portion (5%) of system costs
 - Death and permanent total disability claims are expensive, but they are only a very small portion of total lost time claims and overall system costs

Conditions Prior to 2007

- 35% Increase to Assessments

	<u>15-8</u>	<u>25A</u>	<u>Other</u>	<u>Total</u>
2001	\$375M	\$60M	\$290M	\$725M
⋮	⋮	⋮	⋮	⋮
2006	\$500M	\$110M	\$378M	\$988M

Reflect much greater utilization of 15-8 and 25-A funds

Conditions Prior to 2007

- Other Cost Drivers
 - High litigation rate
 - Antiquated, complex, inefficient system
 - Low settlement rates

Conditions Prior to 2007

- Summary
 - Low maximum and minimum weekly benefits in place for 15 years
 - Lost time claim costs increasing much greater than countrywide average
 - Driven exclusively by permanent partial claims
 - Higher medical inflation for permanent partial claims
 - Permanent partial claims were an increasing portion of total lost time claims
 - 25% of benefit costs attributed to non-scheduled permanent partial claims
 - Accelerating assessment costs
 - Inefficient and litigious system

2007 Law

2007 Law: The Changes

- Increase to maximum and minimum weekly benefits
 - Minimum increased from \$40 to \$100 effective July 1, 2007
 - Maximum increased according to following schedule

Effective Date	Maximum Weekly Benefit
7/1/2007	\$500.00
7/1/2008	\$550.00
7/1/2009	\$600.00
7/1/2010	2/3rd of AWW: \$739.83
7/1/2011	\$772.96
7/1/2012	\$792.07
7/1/2013	\$803.21
7/1/2014	\$808.65

2007 Law: The Changes

Change in Average Weekly Wage (selected NY areas)

	Buffalo MSA	Capital District MSA	Rochester MSA	Syracuse MSA	Nassau/ Suffolk Met Div	Putnam/ Rockland/ Westchester	New York City	Maximum WC Benefit
2005	678	754	731	702	859	1008	1305	400
2006	711	790	759	732	901	1059	1409	400
2007	735	812	784	762	944	1113	1540	400/500
2008	750	845	804	780	931	1122	1546	500/550
2009	754	863	802	792	979	1116	1421	550/600
2010	771	883	819	807	1007	1160	1500	600/740
2011	792	900	834	818	1023	1173	1538	740/773
2012	807	917	848	843	1042	1207	1549	773/792
2013	818	942	863	877	1042	1208	1547	792/803
Annual Changes								
2005-2013	2.2%	2.7%	1.9%	2.5%	2.4%	2.1%	1.6%	
2007-2013	1.9%	2.3%	1.6%	2.2%	2.0%	1.6%	0.3%	
2009-2013	2.1%	2.2%	1.8%	2.5%	1.6%	2.0%	2.0%	
Source: NY State DOL; 2013 data is preliminary								
MSA data is by calendar year; Maximum WC benefit changes each 7/1								

2007 Law: The Changes

- Duration limits on non-scheduled permanent partial claims
 - Eliminates lifetime awards for all but most serious claims
 - Ranges from 225 weeks to 525 weeks
 - Effective March 13, 2007

2007 Law: The Changes

- Close the Special Disability Fund (15-8)
 - 15-8 is a mechanism by which employers are reimbursed for all or a portion of claim costs
 - “Second Injury Fund”
 - Employer retains claim management responsibility
 - 15-8 funded through assessments on cash flow basis
 - Viewed as inefficient
 - Closed to claims with dates of loss on or after July 1, 2007
 - Five year waiting period – last claims entered June 30, 2012
 - Large backlogs

2007 Law: The Changes

- Expand Aggregate Trust Fund to permanent partial disability claims
 - Material change in that now ATF includes most claims
 - Still applies only to private carriers

2007 Law: The Changes

- Medical Treatment Guidelines
 - Expected savings
 - Not implemented until 2010
 - Other elements of medical benefits implemented at time of law change

2007 Law: What Actually Happened

- Official Pricing Approved by New York State Insurance Department
 - Overall impact of law change was a 17.1% cost decrease
 - Key Assumption: The cost of permanent partial claims would **DECREASE** by approximately 33%
 - Decrease to permanent partial claim costs would more than offset benefit increases

2007 Law: What Actually Happened

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As of 10/1/2013, Loss Costs in New York are greater than they were prior to the 2007 law changes.

Loss Cost: Indemnity + Medical + Claim Adjustment Expense

2007 Law: What Actually Happened

- What went wrong?
 - Utilization and Healing Period
 - Utilization reflects the willingness to make use of the system either by filing a claim or increasing duration of disability
 - Healing period is the time spent on disability prior to receiving an impairment rating
 - Healing period is a type of utilization

2007 Law: What Actually Happened

- Increase to maximum and minimum weekly benefit
 - Utilization grossly underestimated
 - Only 0.5% provision for increased utilization considered

Consensus view from Oliver Wyman clients:

“More employees using the system for a **much longer period** of time at a **much higher** weekly benefit **cost”**

2007 Law: What Actually Happened

- Increase to maximum and minimum weekly benefit
 - Evidence: Frequency – “More employees using the system”
 - Lost time claim frequency stops downward trend and begins to increase after the law change (effective July 1, 2007)
 - Permanent partial percentage of lost time claims accelerates

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2007 Law: What Actually Happened

- Increase to maximum and minimum weekly benefit
 - Evidence: Longer Healing Period – “for a much longer period of time”
 - Healing period is time spent on total disability prior to receiving impairment rating
 - NYWCB: Prior to 2007 → 4.8 years
Post 2007 → 6.4 years
 - At \$600 per week, this adds \$50,000 to a claim
 - Why?
 - Economically feasible for claimant to remain out due to high maximum benefit
 - Claimant attorneys acting to delay impairment rating
 - PP duration limit clock starts at impairment rating
 - Does not include healing period
 - Insurers may be acting to delay impairment rating to avoid ATF deposit

2007 Law: What Actually Happened

- Duration Caps
 - In place and functioning
 - BUT: utilization and increase to healing period completely offset expected savings
 - 2007 to 2010

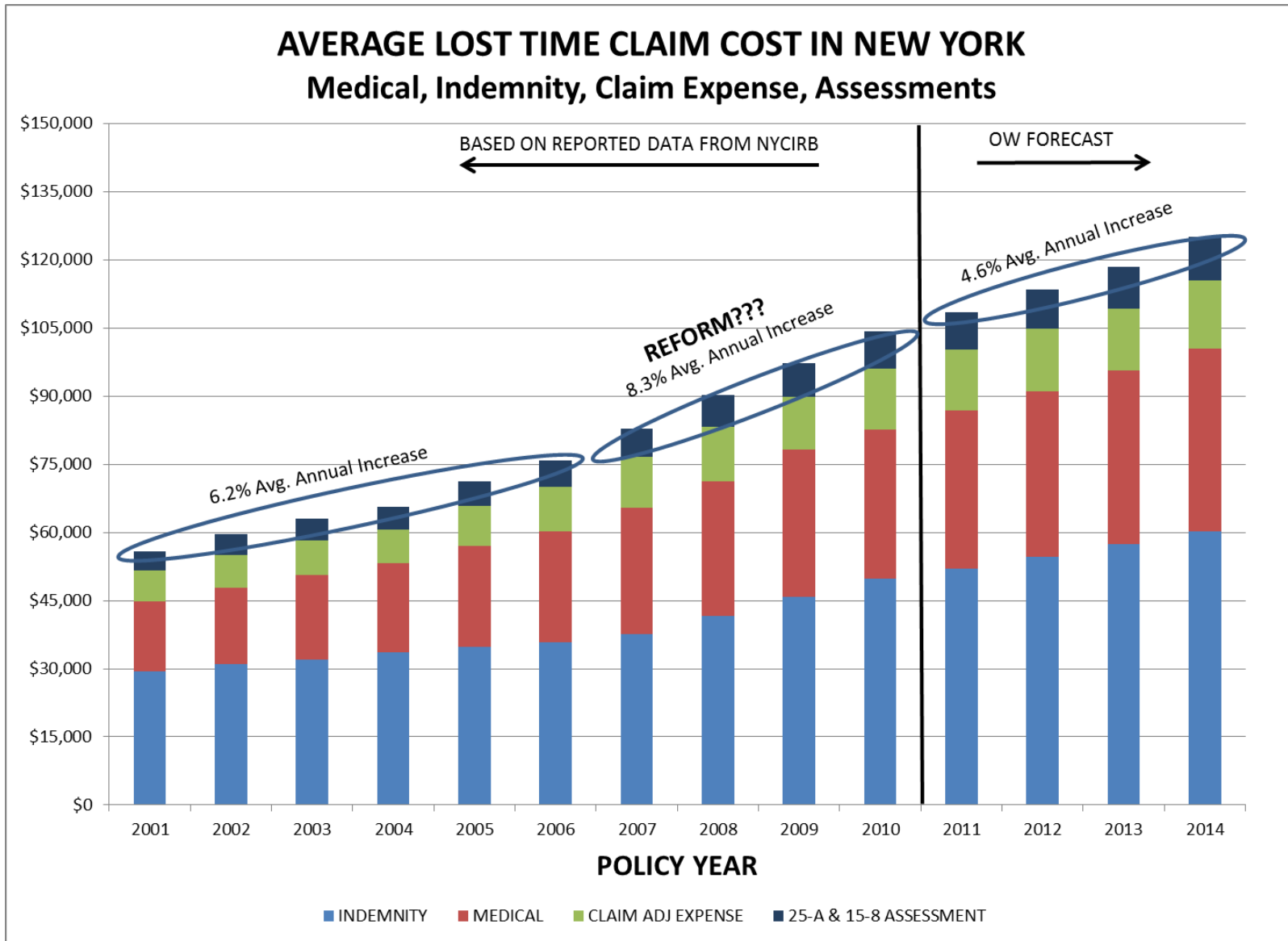
Lost Time Claim Frequency	+ 4.0%	1.040
Lost Time Claim Cost	+37.0%	1.370
Expected System Savings Due to PP Duration Cap	<u>- 28.0%</u>	<u>0.720</u>
	+ 2.7%	1.027

- Hardship clause untested



THIS IS A BIG CONCERN

2007 Law: Expected Savings



2007 Law: What Actually Happened

- Aggregate Trust Fund
 - Expanded to include permanent partial disability claims
 - Insurers want to avoid ATF deposit
 - May be acting to extend healing period as well
 - Gives claimant attorneys greater leverage
 - Claimants want to avoid ATF deposit
 - ATF will settle claims at amounts lower than insurer might have settled, and keep the difference
 - Oliver Wyman clients assert leverage generally favors claimants
 - Result is higher costs that are difficult to quantify
 - Original pricing gave no net impact : 0%

2007 Law: What Actually Happened

- Medical Treatment Guidelines
 - Implemented in 2010
 - Favorably received
 - Consensus is they will act to control costs

2007 Law: What Actually Happened

- Summary
 - Greater number of more expensive claims
 - Maximum weekly benefit materially increased utilization
 - Lost time frequency on a whole is increasing
 - Permanent partial percentage is growing
 - 1.6 years added to healing period
 - ATF increases claimant leverage
 - Duration caps not yet tested

2007 Law: What Actually Happened

- Summary

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Assessments

Assessments

- 15-8 → Special Disability Fund
- 25-A → Re-opened Claim Fund
- 50-5 → Self-Insurers Assessment
- IDP → Interdepartmental Expense
- 151 → WCB Administration

Assessments

- Methods of Charging: Insured Employer
 - Guarantee Cost
 - Large Deductible
 - Retrospective Plan
- Charge is a percentage of standard premium
- Pass through from insurer
- Annual charge with no future obligation
- 10/1/2012- 12/31/2013: 18.8% of standard premium
- 2014: 13.8% of standard premium
- 2015 and beyond: TBD

Assessments

- Methods of Charging: Self Insured Employer
 - % of Prior Year Indemnity Payments (2013 & prior)
 - % of Standard Premium (2014 & subsequent)
- 2013: 46.9% of Indemnity Losses
 - For every indemnity dollar paid, there is an additional 46.9¢ of assessments
 - Accrual required for future indemnity payments
- 2014: Assessments paid as percentage of standard premium
 - Non municipals also responsible for accrual of 50-5 payments under former structure (approximately 7.6¢ for each indemnity dollar)
- 2015 and beyond: TBD

Assessments

ASSESSMENT YEAR	CLAIM RELATED			OTHER			ALL ASSESSMENTS
	15-8	25-A	15-8 and 25-A	IDP	151	50-5	
2001	375,000,000	60,000,000	435,000,000				
2002	379,000,000	64,000,000	443,000,000				
2003							
2004	495,000,000	96,000,000	591,000,000				
2005	538,000,000	102,000,000	640,000,000				
2006	500,000,000	110,000,000	610,000,000				
2007	602,747,649	137,239,465	739,987,114	63,188,412	229,404,962	8,086,616	1,040,667,104
2008	675,773,477	148,945,842	824,719,319	68,686,660	228,656,027	8,419,334	1,130,481,340
2009	750,236,152	271,841,361	1,022,077,513	71,632,038	232,090,199	19,046,273	1,344,846,023
2010	914,115,003	401,889,339	1,316,004,342	78,394,341	243,590,525	33,068,833	1,671,058,041
2011	852,778,219	469,628,120	1,322,406,339	87,636,293	237,505,281	14,157,624	1,661,705,537
2012	912,928,459	368,957,493	1,281,885,952	86,183,537	249,468,312	25,644,033	1,643,181,834

Assessments

Indemnity Payment Percentages

<u>Section</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
15-8	18.3%	19.3%	20.6%	23.2%	21.8%	22.5%	21.1%
25-A	4.1%	4.2%	7.4%	10.1%	12.2%	9.1%	10.2%
151	6.9%	6.8%	6.6%	6.1%	5.5%	6.7%	6.1%
IDP	1.9%	2.0%	2.0%	2.0%	1.9%	1.9%	1.9%
<u>50-5</u>	<u>0.3%</u>	<u>0.3%</u>	<u>0.7%</u>	<u>3.5%</u>	<u>7.1%</u>	<u>7.4%</u>	<u>7.6%</u>
Total	31.5%	32.6%	37.3%	44.9%	48.5%	47.6%	46.9%

Assessments

- Why did 15-8 and 25-A expand?
 - Closure of 15-8 sensitized industry
 - Surge of applications for 15-8
 - Surge of applications for 25-A
 - Possibly due to economic conditions
- Unrealistic Expectations
 - Thoughts that law change would cause assessments for 15-8 to decline
 - Assessments increased materially
 - 5 year waiting period
 - July 1, 2012 theoretical last date for new claims
 - Large backlog of case
 - Assessments will continue for 40+ years

Summary of Situation: 2012

- “Reform” as respects cost control failed
- Claim costs in 2012 were at an above pre-2007 level
- Claim-Related Assessments (15-8 & 25-A) in 2012 were over 70% higher than in 2007
 - 2007: \$740 million
 - 2012: \$1.282 billion

2013 Law Change

- Embedded in 2013/2014 Budget Proposal
 1. Eliminate Aggregate Trust Fund – not passed
 2. Change the Assessment Process – passed
 - a) Common base for all employers
 - b) Eliminate need for balance sheet accrual for self-insureds (except for 50-5)
 - c) Spread the cost of funding insolvent group trusts across all employers in the state
 3. Close 25-A – passed
 4. Increase minimum weekly benefit from \$100 to \$150 - passed

2013 Law Change

- Insolvent Group Trust Issue
 - Deficit funded through 50-5
 - Potentially \$1 Billion unfunded liability – not quantified as of yet
 - Self-insured employers who behaved properly are burdened with cost of those who did not

2013 Law Change

- Closing 25-A
 - Closed to all Applications as of January 1, 2014
 - Prior to any other issue, cost of running 25-A increased by a factor of 3 since 2006/2007
 - 2006: \$110 million
 - 2007: \$137 million
 - 2008: \$149 million
 - 2009: \$272 million
 - 2010: \$402 million
 - 2011: \$469 million
 - 2012: \$369 million
 - This is before consideration of unintended consequence of 2007 law

2013 Law Change

- Closing 25-A
 - Conditions for 25-A relief
 - 7 years from date of loss
 - Minimum of 3 years since last indemnity payment
 - 25-A provides for primarily medical benefits
 - Prior to 2007 law, bulk of workers compensation cost associated with non-scheduled permanent partial claims
 - Lifetime disability payment
 - Did not qualify for 25-A
 - Since 2007, indemnity portion of claims are being settled and closed
 - Creates large pool of potential 25-A claims
 - 25-A could grow in cost to levels exceeding 15-8

2013 Law Change

- Closing 25-A
 - Impact
 - One time case reserve adjustments for claims reserved for potential 25-A relief
 - Assessments will continue for 40+ years, just like 15-8

2013 Law Change

- Summary

1. Does nothing to address system costs

2. Simplifies assessments

- a) Puts all players on same level

- b) 13.8% of standard premium

- | - Period | Payroll |
|----------|--|
| - Q1 | Actual payroll for January 1 – March 31 |
| - Q2 | Actual payroll for April 1 – June 30 |
| - Q3 | Actual payroll for July 1 – September 30 |
| - Q4 | Actual payroll for October 1 – December 31 |

Form and Payment Due

Postmarked no later than April 30

Postmarked no later than July 31

Postmarked no later than October 31

Postmarked no later than January 31

3. Treats self-insureds equitably

4. Closes 25-A to prevent big problem

Summary

