

# NEW YORK WORKERS' COMPENSATION ALLIANCE

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## **SCHEDULE LOSS COSTS 1992 - 2016**

For the past several years, business and insurance groups have sought to persuade the Workers' Compensation Board to cut benefits for injuries that result in permanent loss or loss of use of a limb. These are known as "schedule loss awards," and apply in cases such as limb amputation, fracture, surgery, loss of vision and hearing, and other permanent damage.

The cuts sought by business are in addition to the major benefit cuts it obtained in the 2007 reforms by imposing time limits on permanent partial disability benefits. Those cuts were estimated to save employers \$1 billion.<sup>1</sup> In exchange for savings, business agreed to increase benefits for temporary disability and schedule loss. Through lobbying, the media, and proposed legislation, business now seeks to renege on that exchange.

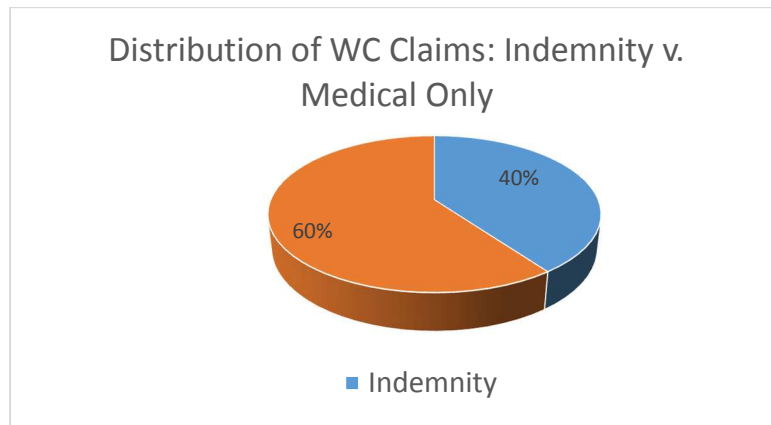
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<sup>1</sup> Workers' Compensation Board Subject Number 046-548, 5/28/13;  
[http://www.Wcb.ny.gov/content/main/SubjectNos/sn046\\_548.jsp](http://www.Wcb.ny.gov/content/main/SubjectNos/sn046_548.jsp)

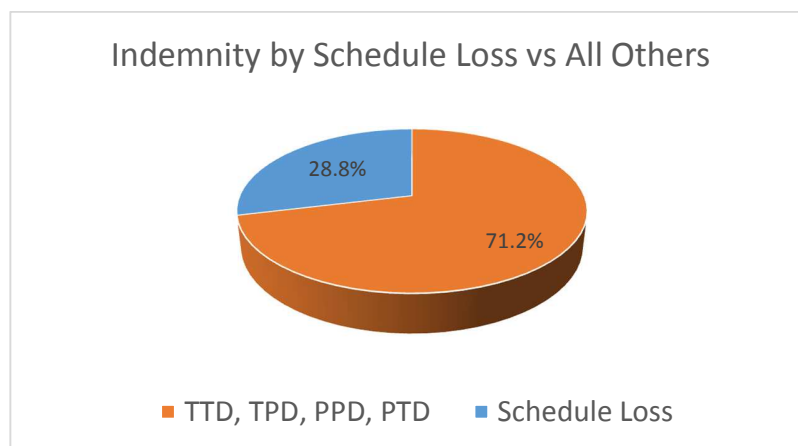
This paper outlines the costs associated with schedule loss of use awards over the past twenty-five years, and demonstrates that there is no economic justification for further reduction in benefits for injured workers.

**I. Schedule Loss Awards in the Workers' Compensation System.**

According to the New York Compensation Insurance Rating Board, only 40% of claims involve indemnity payments; the other 60% are “medical only.”<sup>2</sup>

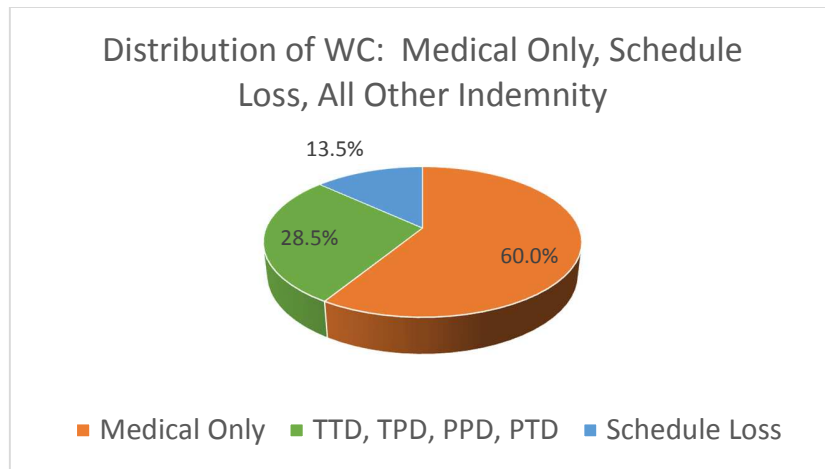


NYCIRB also reports that only 28.8% of indemnity claims involve awards for schedule loss of use.



<sup>2</sup> The data in this section is drawn from NYCIRB R.C. 2412, 6/5/16 and its 2016 loss cost filing, which is available at [http://www.nycirb.org/2007/depts/actuary/LC\\_Filing\\_10\\_1\\_16.pdf](http://www.nycirb.org/2007/depts/actuary/LC_Filing_10_1_16.pdf)

Thus, schedule loss of use awards are only 13.5% of all claims.



Schedule loss awards are based on three factors:

1. The Workers' Compensation Law and the Workers' Compensation Board's guidelines. The law establishes how many weeks of compensation are paid for the total loss or loss of use of each body part. For example, the law provides that complete loss of a hand is 244 weeks of benefits. The Board's guidelines establish criteria for doctors to determine percentage loss of use, which decides how many weeks are payable. For example, if the guidelines assess an injury as a 10% loss of use of the hand, then 24.4 weeks of benefits are payable.
2. The injured worker's average weekly wage. An injured worker's maximum weekly benefit is two-thirds of his or her pre-accident wage. Schedule loss awards are calculated based on weeks of benefits multiplied by the worker's compensation rate. The number of weeks is set by the law and the guidelines; the rate is set by the worker's average weekly wage.
3. The date of the accident. Although an injured worker's compensation rate is two-thirds of his or her average weekly wage, it is limited to the maximum rate in effect on the date of the accident. The maximum rate was unchanged at \$400 per week for fifteen years from 1992 – 2007. From 2007 through 2009 it was increased in steps from \$400 to \$600. In 2010 it was tied to the state average weekly wage and rose to \$739.83. Increases after 2010 have also been tied to the state average weekly wage, which has risen incrementally over a six year period to \$864.32 as of July 1, 2016 (an average of about 2.5% per year).

Each of these three factors must be considered in evaluating the course of schedule loss costs over the past twenty-five years.

## **II. The Law and the Board's Guidelines Have Not Increased Schedule Loss Awards.**

The number of weeks established by law for “schedule loss” has not been increased in over a century, since 1915.

The Board first published its guidelines in 1994, and the method by which percentage loss of use is calculated has not been increased since. The guidelines published in 1994 were consistent with the Board's previous practice when schedule loss was evaluated by doctors employed by the Board.

Thus, the first factor relevant to schedule loss of use has remained stable and has not increased in at least twenty-five years, and perhaps as long as one hundred.

## **III. The Impact of Wage Distribution and the Maximum Benefit Rate on Schedule Loss.**

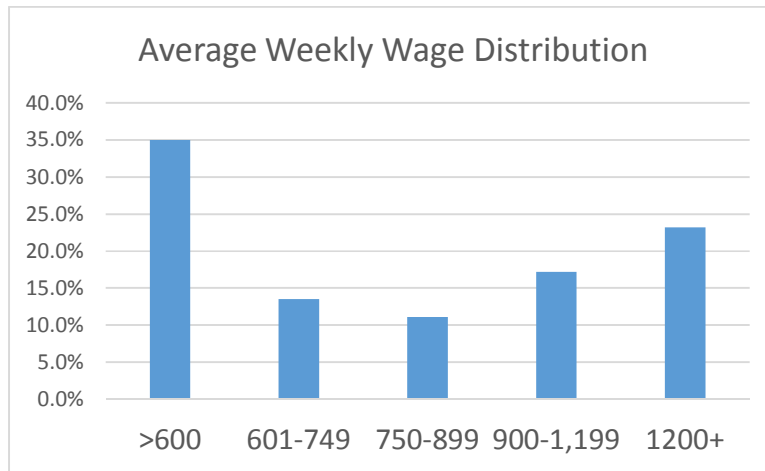
The other two factors that affect schedule loss of use costs, wages and the maximum benefit rate, must be considered together.

The wage distribution of injured workers, as reported by the Workers' Compensation Board, is shown on the table and graph below.<sup>3</sup> It is important to note that 35% of injured workers did not earn more than \$600 per week and therefore did qualify for the maximum benefit rate even before 2007.

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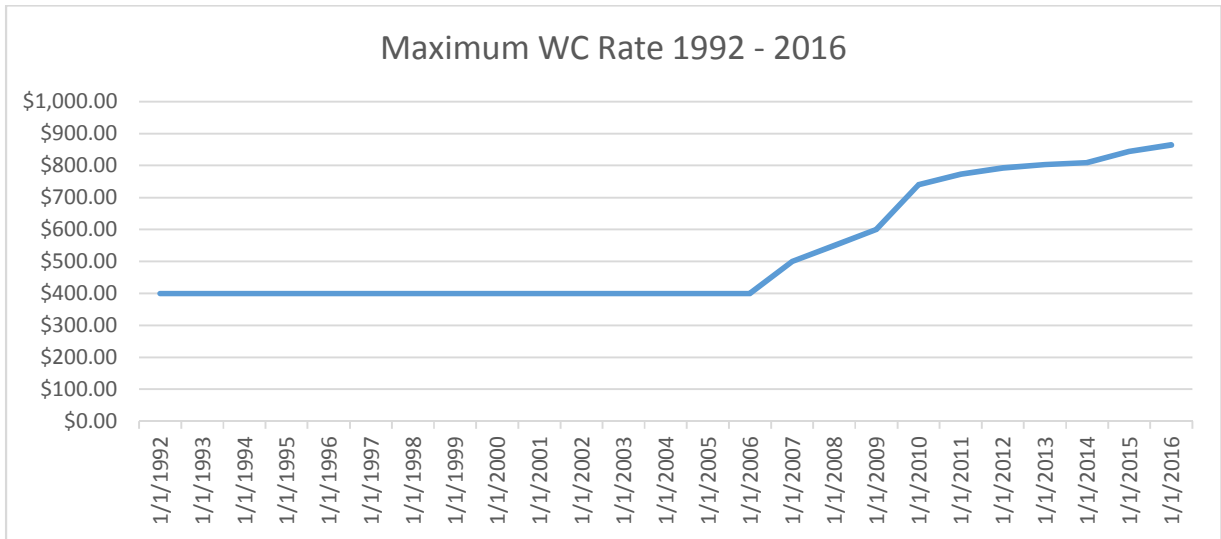
<sup>3</sup> New York State Workers' Compensation Board 2013 Annual Report, available at: <http://www.wcb.ny.gov/content/main/TheBoard/2013AnnualReport.pdf>

Average Weekly Wage	Percentage of Injured Workers
\$600 or less	35%
\$601 - \$749	13.5%
\$750 - \$899	11.1%
\$900 - \$1,199	17.2%
\$1,200 or more	23.2%

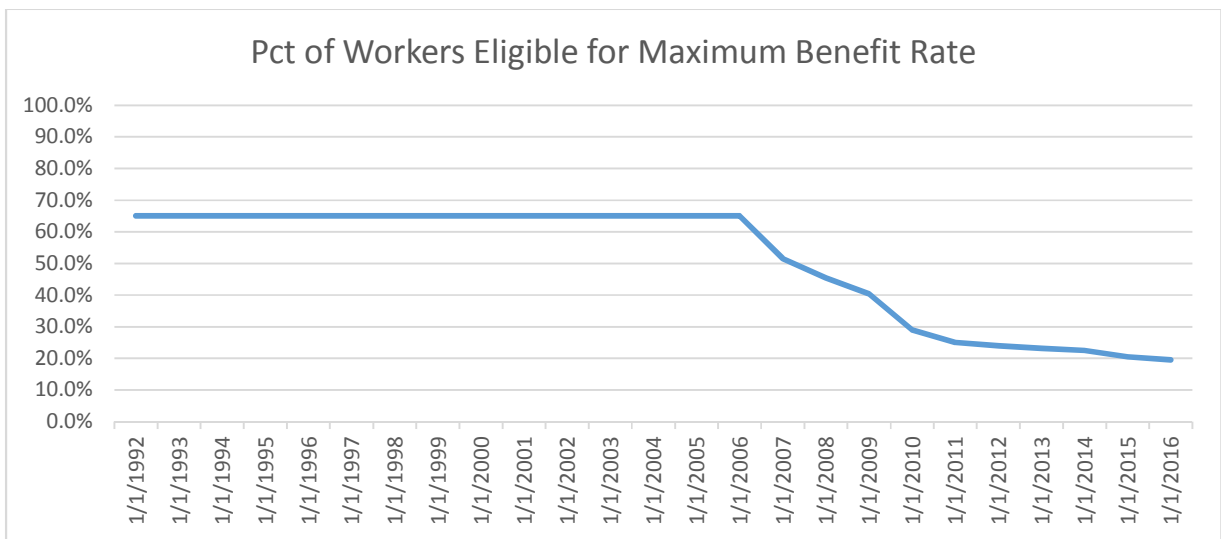


In 2007, in exchange for the imposition of time limitations on permanent partial disability benefits that were estimated to save employers \$1 billion, the maximum weekly benefit rate was raised for the first time in fifteen years. It was understood at the time that this would affect two types of benefits: temporary disability and schedule loss. These benefits would increase, but only for workers who earned more than \$600 per week. Moreover, the percentage of workers who would be affected by increases in the maximum benefit rate would diminish over time.

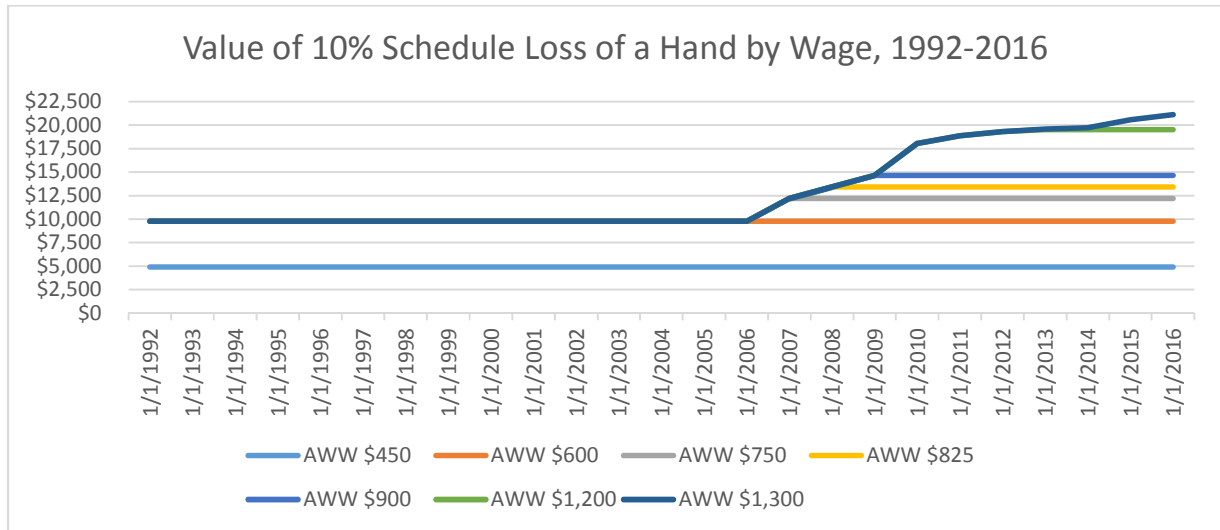
The chart below shows the change in the maximum benefit rate from 1992 through 2016.



The chart below shows the percentage of workers who were eligible for the maximum benefit rate over the same period of time.



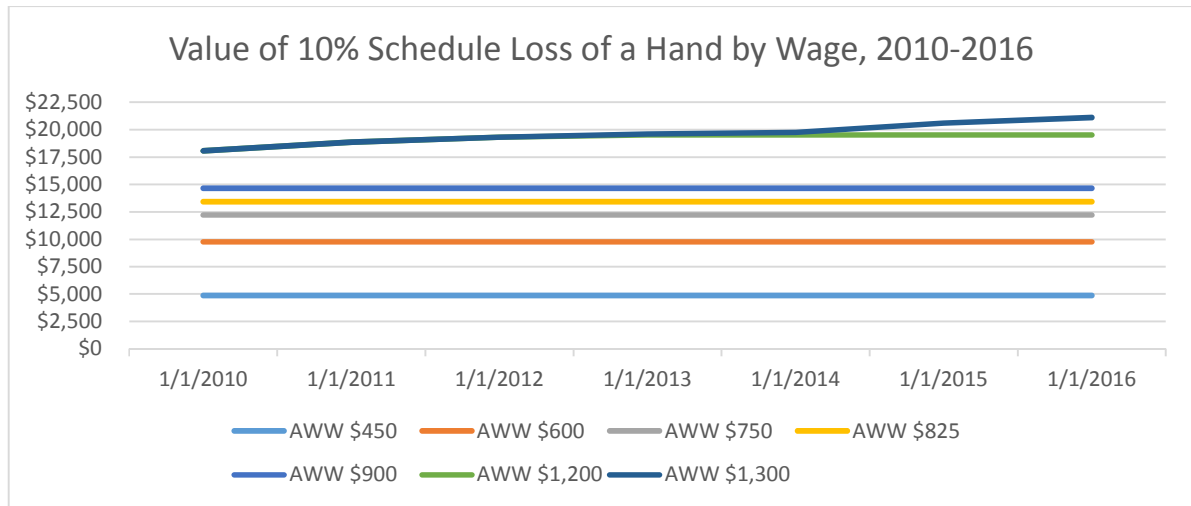
The graph below shows the change in value of a schedule loss award for a ten percent loss of use of the hand for workers earning \$300 per week, \$600 per week, \$900 per week and \$1,200 per week over a twenty-five year period from 1992 to 2016.



As the graph shows, there has been no increase in the value of schedule loss awards for workers who earned \$600 per week or less – 35% of all injured workers - since 1992, nearly a quarter-century. Workers who earn between \$600 and \$900 per week saw a modest increase in the value of their awards between 2007 and 2009, after which they have remained flat for the past five years. Workers who earn between \$900 and \$1,200 per week continued to receive incremental increases between 2009 and 2014, but awards for these workers will not rise further in future years. Only those who earn more than \$1,300 per week – less than a fifth of injured workers – will receive any future increase in schedule loss awards, and those increases will be minimal and incremental.

These charts make it clear that the only significant increase in schedule loss benefits (and overall indemnity benefits) occurred between 2007 and 2010, as the maximum weekly benefit rate was raised from \$400 per week to \$739.83 per week. This was a 54% increase in benefits that affected about 35% of injured workers, while another 35% did not earn enough to see any increase in their compensation benefits. Less than 30% of workers have seen further increases in schedule loss benefits since 2010, and less than 20% since 2014. Moreover, increases for this minority of injured workers have been minimal and incremental.

However, the charts also make it clear that (1) prior to 2007 there was no increase in benefits for any worker for fifteen years; and (2) since 2010, benefits have increased an average of 2.5% per year and have affected a small and ever-diminishing number of workers. The latter is further clarified by the chart below.



Thus, there has been little or no increase in schedule loss costs in twenty-one of the past twenty-five years, with the exception being the transition period from 2007 to 2010 as the maximum benefit rate was raised and tied to the state average weekly wage. This increase was, of course, entirely offset by the savings achieved from imposing time limits on permanent partial disability benefits.

#### **IV. Conclusion.**

Since 2011, increases in the maximum benefit rate have only affected 20% of injured workers. Only 13.5% of those workers have injuries that result in awards for schedule loss of use. Thus, since 2011 only 2.7% of all claims have been subject to increased awards for schedule loss of use. Those increases have, on average, been 2.5% per year. Thus, the overall



increase in costs attributable to schedule loss of use since 2011 has been .0675%, or about two-thirds of one-percent.

Workers with Average Weekly Wage in Excess of \$1,200	=	.20
Multiplied by Percentage of Claims Resulting in SLU	=	.135
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Equals Pct of Claims Subject to SLU Increase since 2010	=	.027
Multiplied by Avg Annual Pct Increase in Maximum Rate	=	.025
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Average Annual Increase in Costs Due to Schedule Loss Awards Since 2010	-	.000675

There is therefore no basis for the contention that schedule loss costs are rising rapidly and should be addressed through revision of the Board's guidelines or statutory change. While it is true that benefits rose sharply for 65% of injured workers between 2007 and 2010 as the maximum weekly benefit rate was raised and tied to the state average weekly wage, this was an anticipated and bargained-for result of the 2007 reforms in which employers obtained an estimated \$1 billion in savings as a result of the time limits on permanent partial disability benefits. It must also be placed into the proper context, which is that there were no increases whatsoever in schedule loss awards for 15 years prior to 2007, and increased costs attributable to these awards have averaged only two-thirds of one-percent since 2010.