

**Overview of *Schleiss v. SAIF* (2013)
and *Brown v. SAIF* (2014)**

Management-Labor Advisory Committee

John Shilts, Administrator
Workers' Compensation Division
June 19, 2014

community
Workers' Compensation

Objectives

1. Provide definitions and policy context:
 - Compensable injury
 - Permanent partial disability
 - Apportionment
 - Preexisting conditions
 - Major contributing cause
 - Combined conditions
2. Give overview of the separate, but related, court cases
3. Outline potential impact on the division's processes, from our perspective

Definitions

Compensable injury

- ...is an accidental injury ... arising out of and in the course of employment requiring medical services or resulting in disability or death

Definitions

Permanent Partial Disability (PPD)

- PPD is awarded in about 25% of accepted disabling claims
- The statutory definition:
 - (A) permanent impairment resulting from the compensable injury; or
 - (B) permanent impairment and work disability resulting from the compensable injury

Definitions

Impairment – PPD

- Loss of use or function of a body part or system due to the compensable injury
- Calculated as a percentage of the whole person
- Rating schedule

Work Disability - PPD

- Impairment, modified by age, education, and adaptability to perform a job
- Awarded for any work restrictions due to the compensable injury
- Based on worker's wages (subject to statutory dollar limits)

Definitions

Apportionment (of impairment)

- A mechanism that reduces PPD impairment awards by the degree to which the worker's loss of use or function of a body part or system is **not** caused by the work injury
- Work disability awards are not further apportioned

Definitions

Preexisting condition means

- Arthritis or arthritic condition; or
- A condition that contributes to disability or need for treatment that was ***diagnosed or treated prior to the injury***

Definitions

Major contributing cause

- A cause that contributes more than 50 percent to an injured worker's disability or need for treatment
- Applies to specific situations in Oregon law
 - ✓ Combined conditions
 - ✓ Consequential conditions

Definitions

Combined conditions

- When a compensable injury combines with
- a preexisting condition
- to cause or prolong disability or a need for treatment, and
- the compensable injury is the major contributing cause of the combined condition

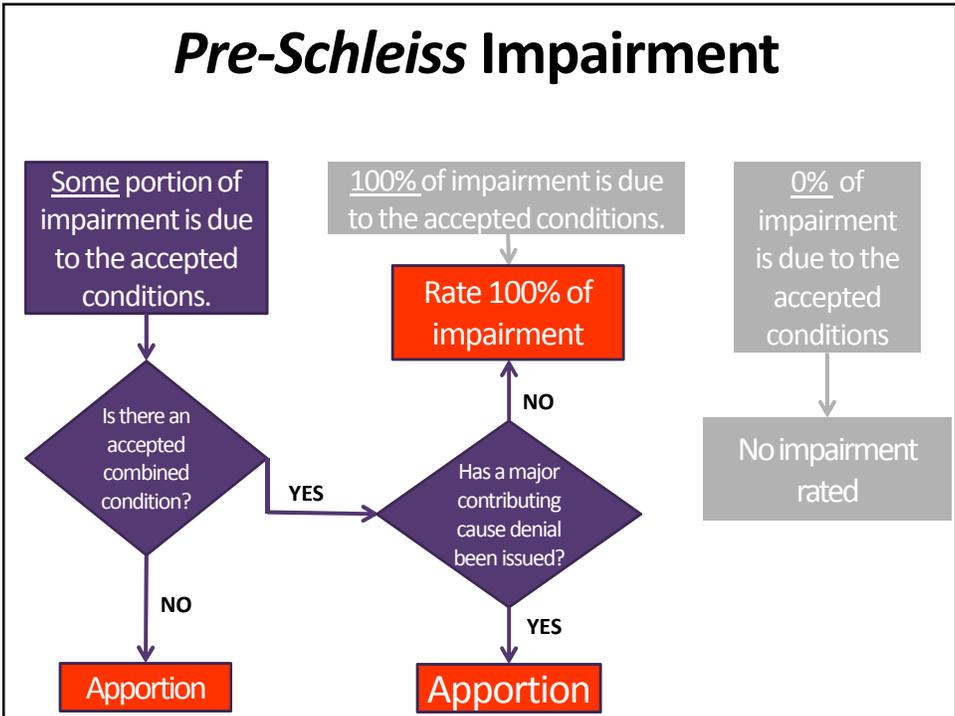
Definitions

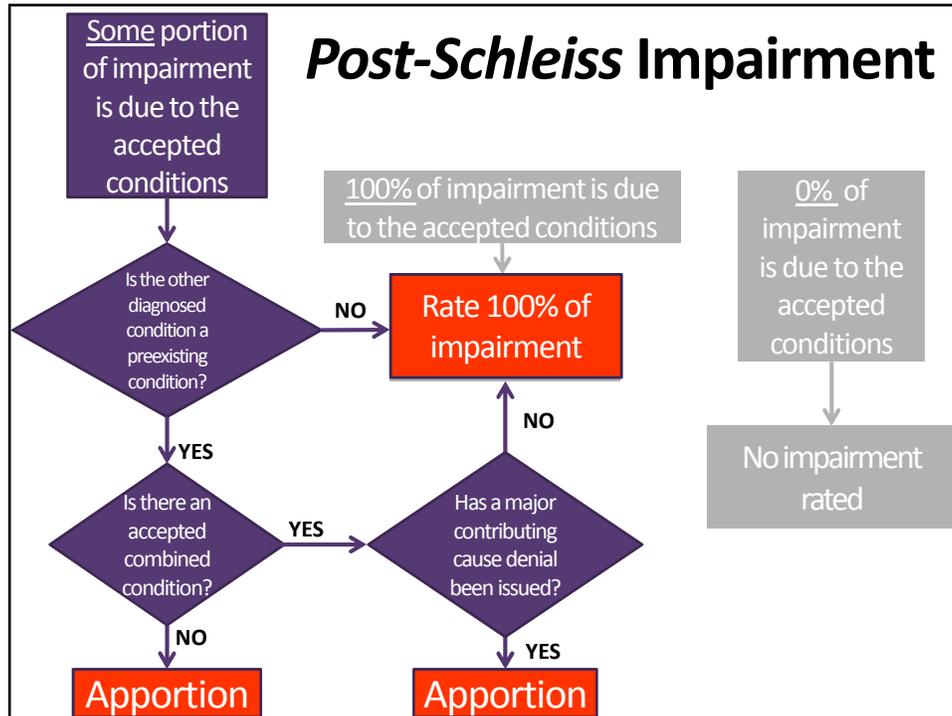
Combined condition apportionment

- When a combined condition has been accepted, apportionment is only permissible when the compensable injury is no longer the major contributing cause of the combined condition

Schleiss v. SAIF Corp.

- Oregon Supreme Court case decided on Dec. 27, 2013
- Link to case
<http://www.publications.ojd.state.or.us/docs/So60774.pdf>





Post-Schleiss Summary

Impact on preexisting conditions

- Before *Schleiss*, any condition that predated the injury could reduce an award for impairment
- After *Schleiss*, only preexisting conditions as defined in statute can reduce an award for impairment

Post-Schleiss Summary

Impact on apportionment of combined conditions

- The mechanism for the apportionment of combined conditions is unchanged
- Before *Schleiss*, non-compensable parts of combined conditions could trigger apportionment
- After *Schleiss*, apportionment is only allowed if it impairment is by a preexisting condition as defined in statute

Post-Schleiss Summary

Examples – handout

Post-Schleiss Summary

Impacts

- Appellate Review Unit will no longer reduce PPD awards due to conditions that predate the work injury but which were not diagnosed or treated prior to the work injury
- Some changes to Division 035 rules necessary
- May be an increase in PPD awards

Post-Schleiss Summary

Impacts

- Increased emphasis on documentation of “preexisting conditions”
 - Diagnostic services
 - Independent medical examinations (IME)
 - Medical arbiter examinations
- More effort to clarify IME and attending physician reports
- Litigation of “preexisting conditions”

Policy Questions

- Is the *Schleiss* decision consistent with how the system should administer the provision of permanent disability benefits?
- When should a worker's permanent disability award be reduced due to the impact of preexisting conditions?
- Should there be a distinction between conditions diagnosed or treated prior to the occurrence of the compensable injury and conditions that were not?

Policy Questions

- Are the impacts of the *Schleiss* decision consistent with the stated system policy objectives in ORS 656.012?
- What is the best way to monitor the impact of the case?

Brown v. SAIF Corp.

- Oregon Court of Appeals decided on May 7, 2014
- Has been appealed to Oregon Supreme Court
- Link to case
<http://www.publications.ojd.state.or.us/docs/A151889.pdf>

Definitions

Combined conditions

- When a compensable injury
combines with
- a preexisting condition
- to cause or prolong disability or a need for treatment,
and
- the compensable injury is the major contributing cause
of the combined condition

Definitions

Major contributing cause

- A cause that contributes more than 50 percent to an injured worker's disability or need for treatment

Pre- Brown - Accepted Conditions

- Insurer could meet its burden of proof to deny a combined condition by showing that the specific **accepted condition** is no longer the major contributing cause of the combined condition.
- An accepted condition is a condition that has been accepted by the insurer.

Brown – Interpretation of Statute

- The definition of a compensable injury is “injury-incident focused.”
- No statute links the compensability of the combined condition to the accepted condition.
- No statute makes the definition of “compensable injury” dependent on the insurer’s acceptance of particular conditions.

Brown – Legislative History

- The legislature did not intend to modify the definition of “compensable injury” when it required listing of accepted conditions and requests for new or omitted conditions.
- The obligation to list accepted conditions was not intended to negatively affect an injured worker’s right to benefits.
- The legislature did not equate a “compensable injury” with an “accepted condition.”

Post- Brown - Accidental Injury

- In order to deny the combined condition, the insurer was required to prove that the **accidental injury** was no longer the major contributing cause of the combined condition.
- An accidental injury is an injury arising out of and in the course of employment.

Brown – Impact

- For accepted combined conditions, the insurer must prove that the “accidental injury” is no longer the major contributing cause of the disability or need for treatment.
- More effects are factored into the major contributing cause determination for combined conditions.
- More analysis in progress.