New Trends in Presumption Legislation
Issues and Solutions
How Big is the Issue?

First, let’s understand the moving parts:

First responders contend the current workers’ compensation system is inadequate in providing timely and valuable benefits for occupational illnesses.

• First responders seeking relief include police, employed and volunteer firefighters, emergency medical technicians

• In recent legislative versions, occupational illnesses include respiratory, cardiac, cancer, mental/nervous, PTSD conditions

And identify the groups involved in the discussion:

• Cities, counties, states

• First responder associations and unions

• Politicians

• Workers’ comp pool managers

• Supporting lobbyists

• Lawyers, lawyers and more lawyers
Then, Let’s Consider the Scope of PTSD Legislation in 2017

States passing PTSD specific legislation for first responders:

- **Colorado** – Two bills: First recognizes PTSD as compensable under workers’ compensation and second allows for treatment of PTSD with medical marijuana

- **South Carolina** – Created a $500,000 fund to help fund first responders’ out of pocket medical costs related to treatment of PTSD

- **Texas** – Act eases evidentiary burden for first responders filing PTSD claims: “preponderence of evidence” and without the need to declare mental impairment

- **New York** – Included PTSD references in 2018 budget allowing first responder claims for mental injury based on extraordinary work-related stress

- **Vermont** – Created a true occupational presumption for PTSD

- **Maine** – Created a true occupational presumption for PTSD

States that considered PTSD legislation but did not pass:

- Florida
- Connecticut
- Minnesota
- New Mexico
- Ohio
Forces Driving PTSD Presumption

Emerging Trends

• 34% of first responders have been diagnosed with clinical depression or PTSD
• Best guess – at least 20% to 37% of first responders likely to be diagnosed with PTSD at some point
• 24 states now permit the use of medical marijuana to treat first responder PTSD

Much of it flows from the debt of 9/11 and its aftermath:

• First responders have earned unquestionable protection of health under the law
• A generation of veterans now fill the ranks of first responders

And in some ways, the role of workers’ compensation has changed:

• Very easy means of assuaging a community’s need to help
• Likely increase in cost to community led by the desire to “do the right thing”
• Lack of persuasive scientific evidence is irrelevant – sentiment over science

Still plagued by the uncertainty of cost – every source weighs the cost of PTSD differently
VT House Bill 197:

• Sought to establish a rebuttable presumption for first responders diagnosed with PTSD or presuming PTSD was incurred during service in the line of duty; and

• Included mental conditions under the definition of “occupational disease”

What is HB 197 trying to change or improve?

• In VT, prior to HB 197, to carry a mental injury workers’ compensation claim, a first responder must demonstrate stress of a greater degree than other similarly-situated employees and connected to a physical injury (established by Crosby v. City of Burlington (2003))

• Act 80 - Final version (in part): For a first responder, PTSD that is diagnosed by a mental health professional shall be presumed to have been incurred during service in the line of duty and shall be compensable unless it is shown by a preponderance of the evidence that the PTSD was caused by nonservice-connected risk factors or exposure

What is unique about Act 80?

• Definition of “Mental Health Professional”: Very broad description of professional charged with diagnosing PTSD under the law and includes clinical social worker, mental health counselor and alcohol or drug abuse counselor

• Mental Conditions Described as Personal Injuries for All Employees: Rather than the more common comparison to “similarly situated employees to determine stress level”, Act 80 references “average employee across all occupations” and broadens the scope of the legislation not only to all employees but possibly to non-PTSD mental condition claims.
Why is the Georgia Model Important?

The success of the program hinges on forging compromise among a number of parties:

- Firefighters
- Pools
- Cities/Counties
- Politicians
- Lots of lawyers

The political history in Georgia is nearly identical to other states considering presumption legislation:

- Year over year efforts to push presumption legislation
- Considerable disagreement over causality between firefighting exposures and cancer
- Considerable disagreement over the need and cost
- Legislators relied on the governor to veto each year
- Very emotional issue for the firefighter community

The numbers made sense for both the municipal and county workers’ compensation pools:

- If the presumptive legislation passed, the approximate cost to the GA public entities would be an additional $1000 per firefighter per year
- If the cancer benefit program was chosen as an alternative, the cost would be less than $250 per firefighter per year
Designing the Georgia Solution

The Georgia firefighter plan aligns with the workers’ compensation model on two components:

- Supplemental Medical Coverage for Illness – **Lump-sum Indemnity for Cancer Only**
- Income Protection for Cancer Diagnosis – **Wage Replacement**

**Lump-sum Cancer Indemnity Benefit**

- Complements existing medical coverage with lump-sum benefit paid at time of cancer diagnosis
- No coordination with other insurance benefits
- Helps to fill financial gaps caused by out of pocket expenses associated with illness
- Benefits are paid regardless of what is covered by medical plan
- Payments are made directly to covered employees to spend as they choose

**Wage Replacement**

- Helps protect financial security during challenging treatment of cancer
- Helps Members maximize work force productivity and minimize absences
- Strong focus on the abilities of people with disabilities to support them in returning to work
- Helps to fill financial gaps caused by out of pocket expenses associated with illness or injury
- No coordination with lump-sum plan
- Payments are made directly to covered employees to spend as they choose
First Responders will lobby to improve/broaden existing workers’ compensation laws

- Fewer limitations regarding eligibility
  - Lobby efforts to legislate closer to the Oregon, Vermont, Maine models
  - Easier burden of proof for first responders
  - More mental/mental legislation
  - PTSD specifically defined as a mental/nervous condition for workers’ compensation

- Broadening volunteer first responder coverage

Insurance markets will develop new products to fit legislative requirements

- PTSD suite of products
- More effective employee assistance programs – taken from examples in the private sector
- Taxpayer-paid and voluntary products
- Better communication strategies

Georgia is the first example of a growing trend in devising an alternative to presumption legislation

- New York State is in the final stages of enacting a benefits program rather than presumption
- Louisiana just recently passed a lump-sum supplemental medical benefit program
- Both states acted within 1 month of Georgia cancer program becoming law