

**EXPLANATION OF 14.09.01.13
(.13 Subsequent Injury Fund- REQUEST FOR IMPLADER)**

On March 15, 2004, Commission rules will prohibit the practice of orally implading the SIF on or near the date of a scheduled hearing. The new rule requires that the SIF be impladed in writing, with a specific requirement that the implading party identify the evidence which supports the claim that the SIF may be liable.

The new rule does not require that attorneys produce voluminous medical records when fulfilling this requirement and the Commission strongly discourages such a practice. The Commission carefully chose the word "identify the evidence" when drafting the new rule to convey its desire that the implading party critically assess the potential SIF liability in the case at the time of filing and be capable of reciting in a brief and concise manner why the SIF should be a party to the proceeding.

Below are three (3) hypothetical examples demonstrating the proper identifications of evidence.

Example 1 (None of the records identified below are attached)
Evaluation/Rating by Dr. Feelgood – 2001 pre-existing injury-15% R. Leg
WCC Order in Claim#555555-2001 pre-existing injury-10% R. Leg
Records of cardiologist -1985 – 2003 hypertension
Work attendance records 2000-2003 related to lost time for hypertension
Hospital Records-1975 MVA-fractured L. hip
Evaluation/Rating by Dr. Humble for this accident-43% neck

Example 2 (None of the records identified below are attached)
Blindness at birth-R. Eye
Records of primary care physician for diabetes
WCC Order in Claim #555555-pre-existing injury-5% neck
Industrial Loss from pre-existing injury-\$25,000 annual salary reduction
Evaluation/Rating by Dr. Isee for this accident-90% L. eye

Example 3 (None of the records identified below are attached)
WCC Order in Claim #555555-5% other cases (neck)(25 weeks)
WCC Order in Claim #555556-15% L. Hand(37.5 weeks)
WCC Order in Claim #555557-22% other cases (back)(110 weeks)
Evaluation/Rating by Dr. Payme for this accident-70% L. elbow/arm

COMAR 14.09.01.13

.13 Subsequent Injury Fund—Request for Impleader.

A. A party impleading the Subsequent Injury Fund more than 30 days before a scheduled hearing date shall file a request for impleader.

B. A party impleading the Subsequent Injury Fund within 30 days of a scheduled hearing date shall file a request for impleader along with a declaration setting forth the moving party's prima facie case for alleging the involvement of the subsequent injury fund, including, but not limited to, identification of the evidence the party intends to rely on to prove the liability of the subsequent injury fund. Upon compliance with this section, the request shall be granted and the impleading party shall comply with §C of this regulation.

C. Within 10 days following the granting of a request for impleader, the impleading party shall provide the following to the subsequent injury fund and all other parties to the claim:

- (1) A copy of the original claim and any amendments;
- (2) Each issue previously filed in the claim;
- (3) Any award or order entered by the Commission on the claim;
- (4) Identification, by claim number if available, or prior awards or settlements to the claimant for permanent disability made or approved by the Commission, or by a comparable Commission of another state, or the District of Columbia;
- (5) All relevant medical evidence relied on to implead subsequent injury fund;
and
- (6) A certification providing that a copy of the request for impleader, along with all required information and documents, have been mailed to the subsequent injury fund and all other parties to the claim.

D. A party who fails to comply with this regulation or causes unreasonable delay without good cause is subject to an assessment of costs and reasonable attorney fees under Labor and Employment Article, §9-734, Annotated Code of Maryland.