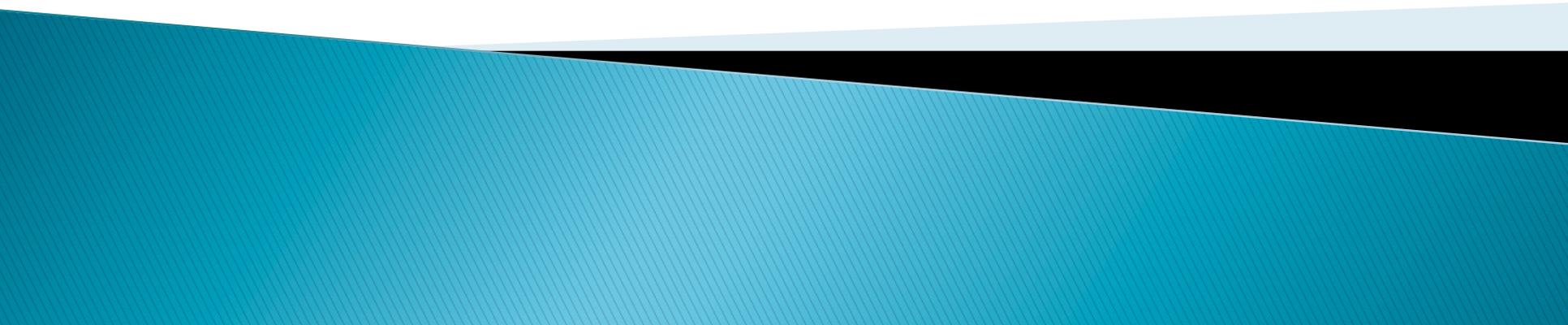


# Management of Workers' Compensation Cases From a Judicial Perspective

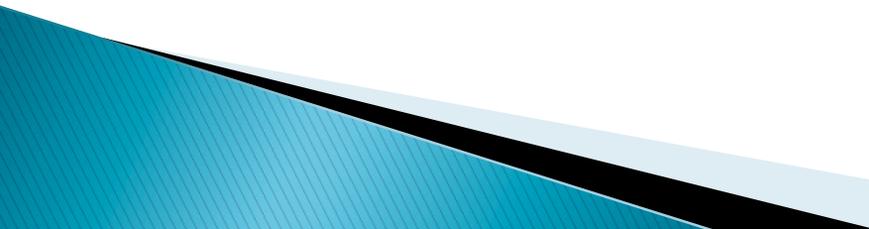
June 6, 2017



# Insight and Suggestions on the Most Effective and Efficient Approach in Managing Cases from Date of Injury to Resolution



# Presented By:

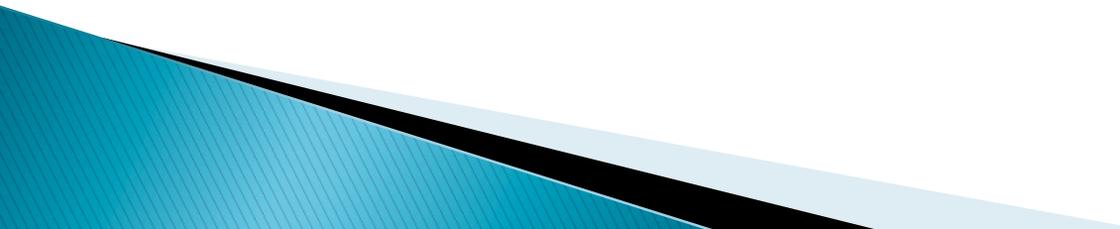
- Judge Lawrence Kasten – Cape Girardeau
  - Judge David Zerrer – Columbia
  - Judge Robert Dierkes – Jefferson City
  - Judge Lisa Meiners – Kansas City
  - Judge Robert Miner – St. Joseph
  - Judge Lee Schaefer – St. Louis
  - Judge Tim Wilson – Springfield
- 

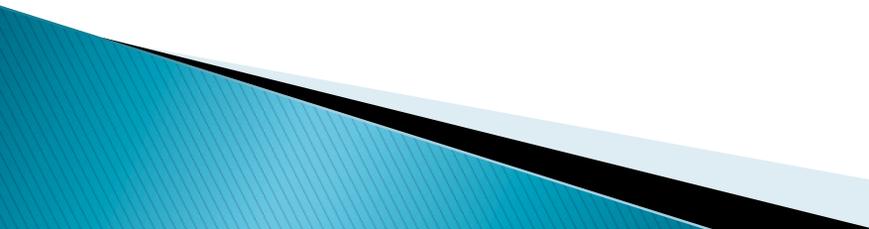
# Report of Injury



# Suggestion

**Promptly File A Report of Injury as  
Required by  
Section 287.380 RSMo**

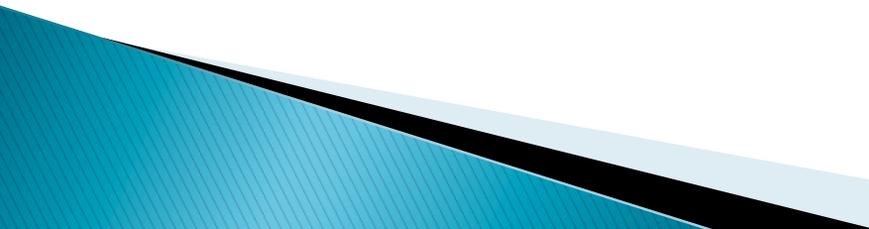


- Employers shall report all injuries to their insurance carrier or third party administrators within 5 days of the date of injury or within 5 days of the date in which the injury was reported to the employer by the employee.
  - Every employer or insurer shall within 30 days after knowledge of an injury file with the Division a report of injury.
- 

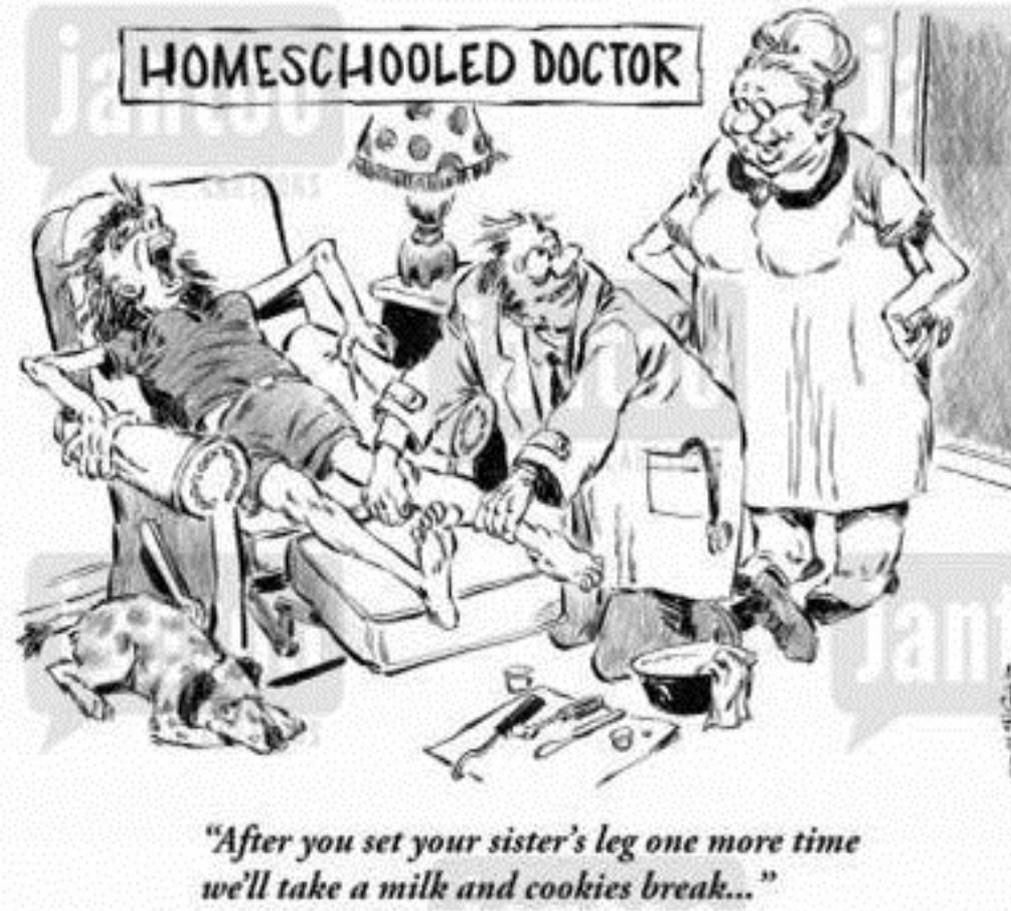
# Failure to File Report of Injury

- Any Employer or Insurer who knowingly fails to report any accident under the provisions of Section 287.380.1 RSMo shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of \$50.00 to \$500.00 and/or imprisonment in the county jail for 1 week to 1 year. See Section 287.380.4 RSMo.

# Failure to File Report of Injury or Not Timely Filing Report of Injury

- Extends the Statute of Limitations for the employee to file a Claim for Compensation from two years to three years.
  - If the report of injury is not filed by the employer as required by Section 287.380, the Claim for Compensation may be filed within three years after date of injury or last payment made on account of the injury. See Section 287.430 RSMo.
- 

# Medical Treatment

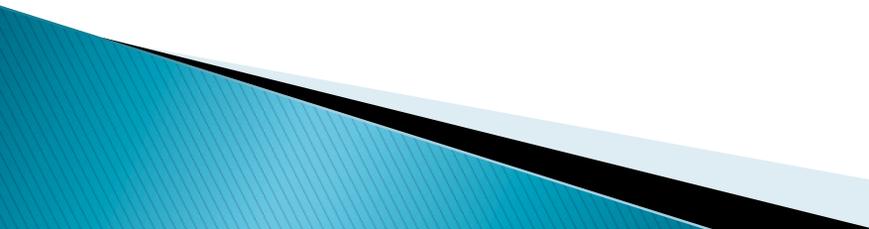


*"After you set your sister's leg one more time we'll take a milk and cookies break..."*

# Provide Prompt Medical Treatment with a Qualified Physician

- Employer has the right to **select** the physician.
  - Employer does not have the right to control the medical treatment.
  - Employee has the right to go to their own physician at their expense.
  - Be prudent in denying medical treatment, as that may waive the right to select the physician.
- 

# Second Opinion

- If the employee has been released by the authorized treating physician and requests a second opinion, what should the employer/insurer do?
  - Should Administrative Law Judges recommend that the employer/insurer send the employee for a second opinion?
- 

# Role of and Use of Nurse Case Managers

- The services of a Nurse Case Manager can be very beneficial and useful to the successful administration of a worker's compensation claim.
  - Are Nurse Case Managers health care providers?
  - Are Nurse Case Managers agents of the employer/insurer?
  - Does the Nurse Case Manager have a fiduciary duty to the employer/insurer and not the employee?
- 

- Is it permissible for the Nurse Case Manager to be present in the examination room with the employee and the health care provider?
  - Are there any ramifications for the Nurse Case Manager to discuss the employee's case with the health care provider outside the presence of the employee?
  - Is communication between the Nurse Case Manager and the health care provider confidential which does not have to be disclosed to the employee?
- 

# Health Care Provider's Duty to Fully Communicate with Employee

- Section 287.140.1 RSMo states “Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating.”

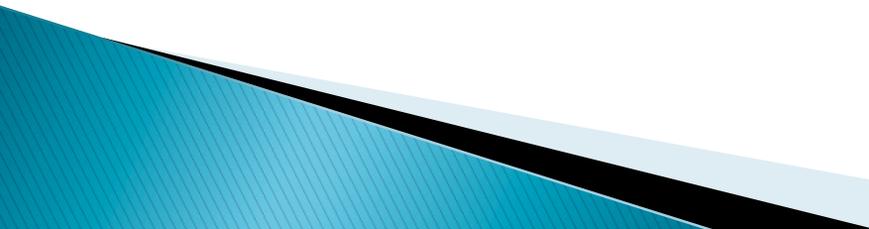
# Temporary Disability



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"No heavy lifting?... But, he's supposed to be clearing out the garage this weekend!"

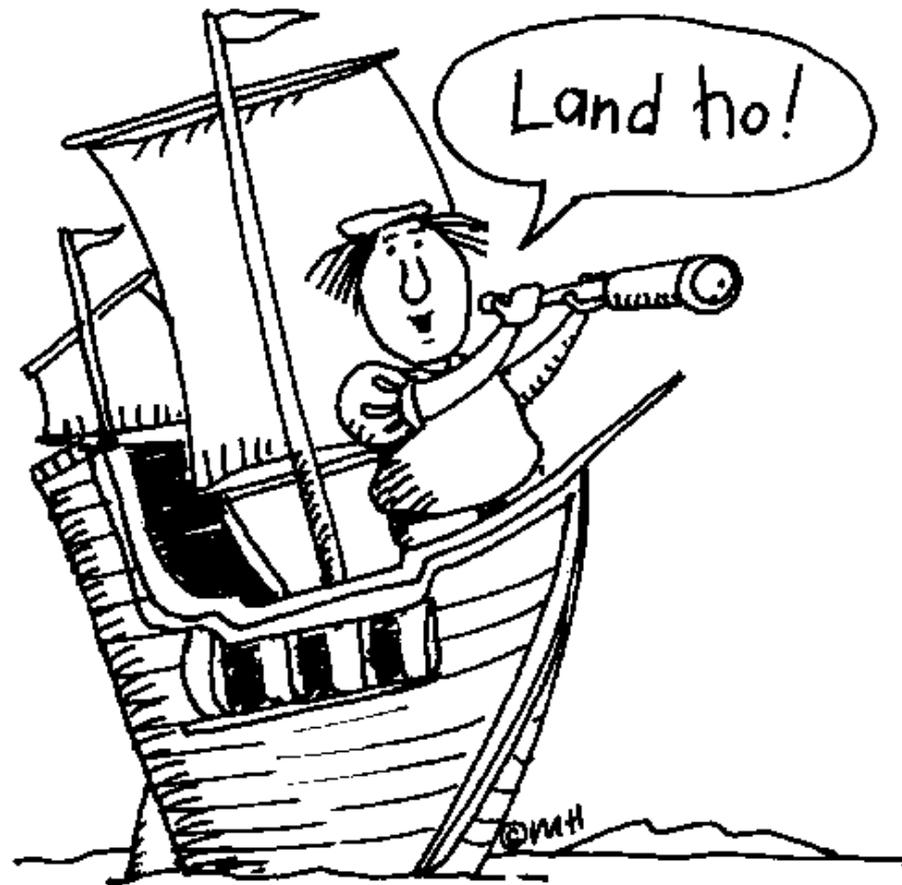
# Senate Bill 66 Regarding Section 287.170 RSMo

- Senate Bill 66 adds paragraph 5 to Section 287.170 RSMo (Effective Date August 28, 2017)
  - If an employee voluntarily separates from employment with an employer at a time when the employer had work available within the medical restrictions, temporary total and temporary partial disability benefits are not payable.
  - Question: Does this change existing law?
- 

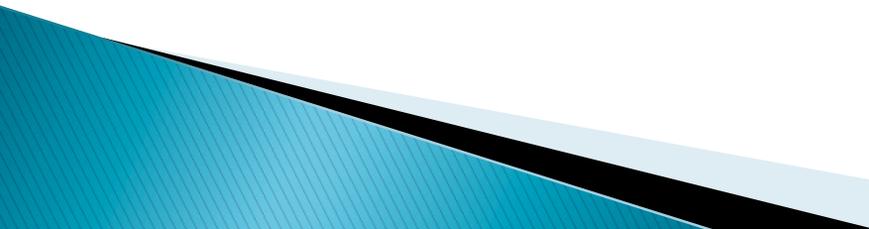
# Senate Bill 66 and Section 287.020 RSMo

- Adds paragraph 12 to Section 287.020 RSMo (Effective Date August 28, 2017)
  - Defines maximum medical improvement as “the point at which the injured employee’s medical condition has stabilized and can no longer reasonably improve with additional medical care, as determined within a reasonable degree of medical certainty.”
  - Question: Does this change existing law?
- 

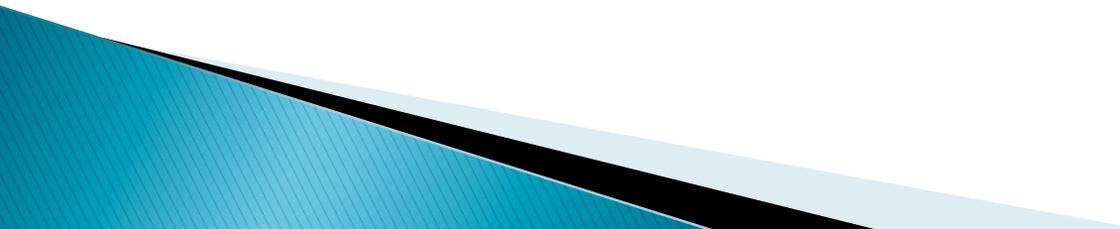
# DISCOVERY



# Suggestions on Discovery

- Submit Subpoenas for Administrative Law Judge approval to the adjudication office that has venue of the case.
  - Don't start the discovery process (compiling medical records, bills and getting opinions) at mediations or other settings with the Division.
- 

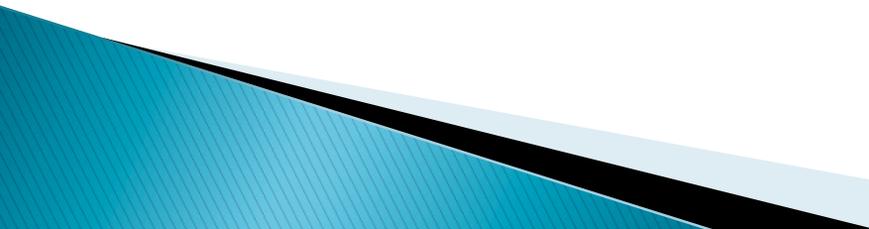
# Docket Settings Including Conferences, Prehearings, Mediations and Dismissals

- Be familiar with the local docket rules in each of the Division Adjudication Offices.
  - When you get notice of a setting, promptly contact your attorney so that the employer/insurer will be represented at the setting.
- 

Follow the Motto of the Boy Scouts  
**BE PREPARED!!!!**



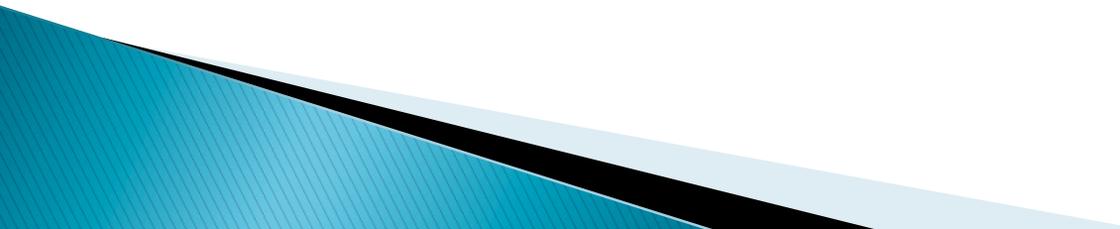
# Suggestions Prior to Docket Settings

- Discuss the case with your opponent(s) to identify the issues and attempt to resolve the issues.
  - Make sure the medical report is tailored to the issues in the case (i.e. need for more treatment, future treatment, medical causation, etc. )
  - Have the relevant documents and produce them to your opponent prior to the setting. (i.e. wage statements, contract if control of premises is issue, policies/rules regarding penalties.)
- 

# Suggestions Prior to Docket Settings

- Review the case to determine the likely value range of the case and obtain settlement authority.
  - Know the requirements, rules and habits of the Administrative Law Judge you will be appearing before.
  - Don't take depositions of experts until after Mediation.
- 

# Suggestions At Docket Settings

- Be on time.
  - If you will be late inform the Administrative Law Judge and opponent.
  - Be respectful, polite and considerate.
  - Keep personal feelings outside of the process.
  - Know your file and the law.
- 

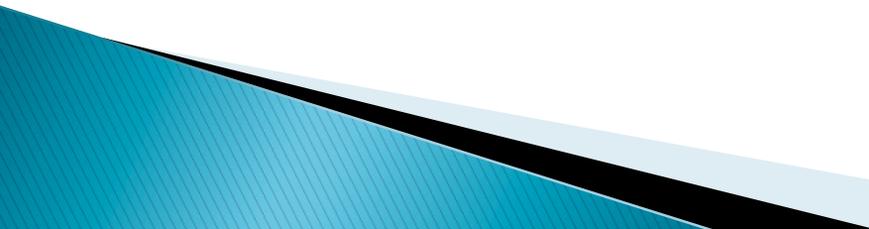
# Suggestions at Docket Settings

- Have copies of relevant material for the ALJ and other parties including medical records, ratings, wage information, statutes and case law.
  - Focus on relevant matters.
  - Be realistic in your expectations and advise clients of likely outcomes.
  - Have access to obtain additional authority to settle the case.
- 

# Dismissals

- On Appeal of a case dismissed for failure to prosecute, the Industrial Commission will set the dismissal aside and reinstate the Claim if the hearing is not on the record.
  - Section 287.460.1 RSMo states that hearings shall be reported by a competent reporter or be recorded by electronic means.
  - Suggestion: On dismissals that are likely to be appealed, make sure that the setting is on the record by a court reporter or by digital recorder.
- 

# Settlements

- Medical Reports from treating or evaluating physicians should be presented to the Administrative Law Judge for review.
  - Responsibility of Administrative Law Judges in approving or not approving settlements is set forth in Section 287.390 RSMo.
  - No agreement by an employee to waive their rights nor any agreement of settlement shall be valid until approved by an Administrative Law Judge.
- 

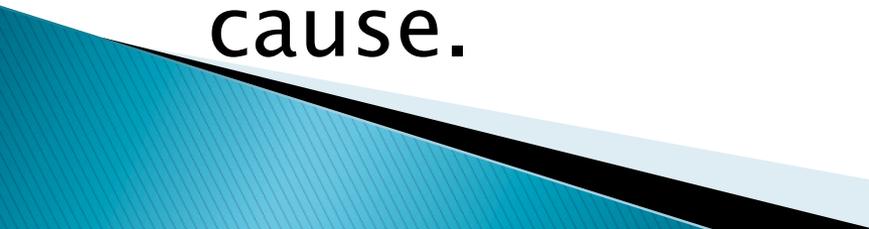
# Statutory Requirements for ALJ Approval of Settlement Under Section 287.390.1 RSMo

- The settlement is in accordance with the rights of the parties.
  - The employee fully understands his or her rights and benefits.
  - The employee voluntarily agrees to accept the terms of the settlement.
  - The settlement is not the result of undue influence or fraud.
- 

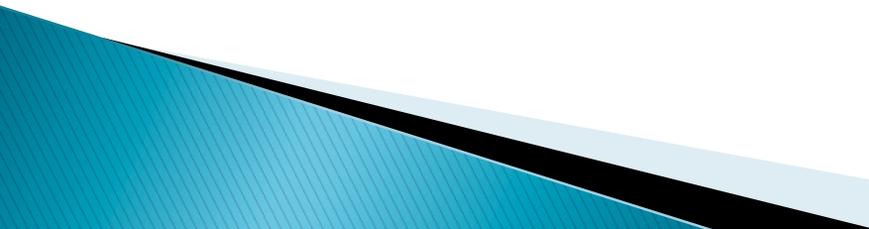
# Senate Bill 66 Regarding Section 287.390 RSMo

- Adds paragraph 7 to Section 287.390 RSMo (Effective Date August 28, 2017)
  - A claimant shall have a period of 12 months from the date of receipt of a rating from the employer's physician to acquire a rating from a physician of their own choosing.
  - If after 12 months the claimant has not acquired a rating any settlement entered into this section shall be based upon the initial rating unless an Administrative Law Judge or the Commission finds extenuating circumstances.
- 

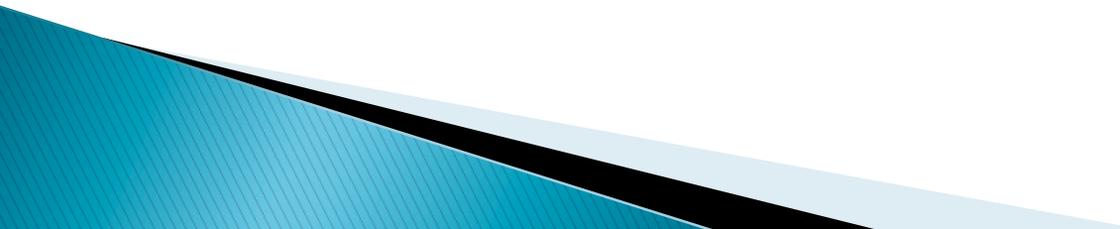
# Senate Bill 66 and Section 287.390 RSMo

- A finding of extenuating circumstances shall require more than failure of the claimant to timely obtain a rating.
  - The employer can waive this provision with or without stating a cause.
- 

# Questions Regarding Section 287.390.7 RSMo

- Does this provision require the approval of a settlement even if the ALJ finds that one or more of the four requirements under Section 287.390.1 have not been met?
  - Will this provision lead to more pro se employees hiring attorneys?
  - Will this provision lead to more hearings?
- 

# Suggestions Prior to Hearing

- Prior to filing hearing request, make sure all discovery is complete and the parties are ready to present their evidence.
  - Complete the hearing request form in its entirety.
  - Submit the appropriate Request for Hearing Form, either final or temporary. When filing a request for a temporary 287.203 Hearing, make sure that the employer/insurer has provided compensation, has terminated the compensation and the employee is disputing the termination.
- 

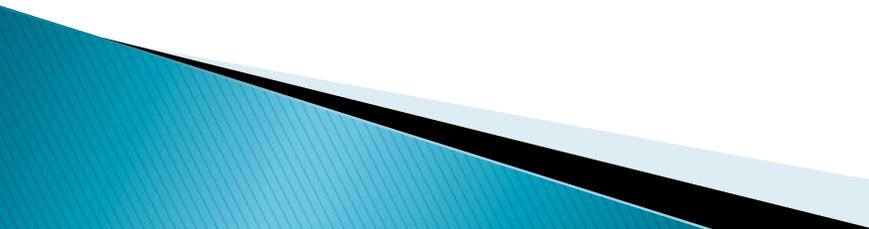
# Suggestions Prior to Hearing

- Prior to the day of the hearing, the parties should discuss what the stipulations and the issues will be at the hearing.
  - Prior to the day of the hearing, the parties should review and discuss their exhibits.
  - Prior to the day of the hearing, the parties should pare down large exhibits and should avoid duplicative evidence.
- 

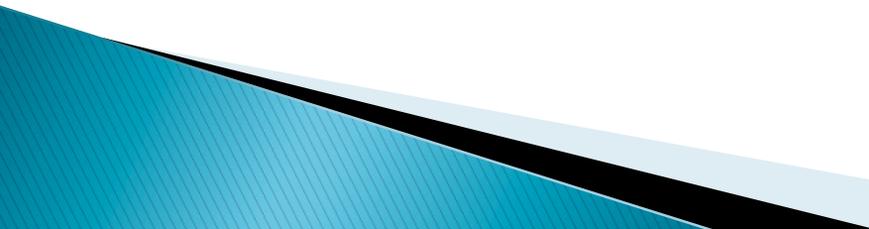
# At the Hearing

- **Be prepared.**
  - **Be organized.**
  - **Be professional.**
  - **Have your exhibits ready to be marked by the court reporter when you arrive.**
- 

# At the Hearing Know the Stipulations and Issues Including:

- The average weekly wage/rate of compensation.
  - The amount of medical bills previously paid.
  - The amount of medical bills being requested along with the name and the amount for each health care provider.
  - The amount, number of weeks and time periods of TTD paid.
  - The amount, number of weeks and the time periods of additional TTD being claimed.
- 

# Proposed Awards or Briefs

- Be familiar with the practices of the ALJ regarding the filing of proposed Awards or Briefs.
  - Make sure to file it in the correct format, that it is timely and follows the instructions regarding regular mail and/or email.
  - In 203 hearings and temporary hearings be aware whether the proposed Award or Brief will be due on the day of the hearing.
- 

# QUESTIONS??????



THANK  
YOU

The image features the words "THANK YOU" in a bold, 3D, light green font with black outlines. The word "THANK" is on the top line, and "YOU" is on the bottom line. The letter 'O' in "YOU" is replaced by a cartoon character's face. The character has a tan complexion, closed eyes with small dashes for eyelashes, a large nose, and a wide, open-mouthed smile showing a red tongue. The entire graphic is set against a white background with a blue and white diagonal pattern in the bottom-left corner.