

Hidden Fees – The NC Second Injury Fund

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Michael F. Hedgepeth

By Michael F. Hedgepeth on May 13, 2025

No one likes hidden fees – especially when they show up after you thought a claim was fully resolved. Unfortunately, that's exactly what can happen under North Carolina's Second Injury Fund statute.

Under N.C. Gen. Stat. § 97-40.1, the North Carolina Industrial Commission has the authority to assess a fee to be paid by Defendants (employers, carriers, and TPAs) whenever an employee is assigned a permanent partial disability ("PPD") rating. This fee may be assessed regardless of whether the claim is resolved through an Industrial Commission Form 26A or a clincher agreement.

Here's how it typically works

- You submit a Form 26A or clincher agreement involving a PPD rating.
- The agreement is reviewed and approved by the Industrial Commission.
- You pay the rating or settlement amount to the employee.
- Then, weeks – or sometimes more than a month – after approval, you may receive an invoice from the Commission assessing a fee of \$250 or \$750, depending on the body part or amount of the PPD rating.

Key Points

- The Second Injury Fund fee is governed by N.C. Gen. Stat. § 97-40.1.
- The statute allows the Commission to assess a fee against the employer or its insurance carrier as follows:
 - Up to \$250 for the loss, or loss of use, of each minor member in cases of permanent partial disability.
 - Up to \$750 for a fifty percent (50%) or more loss, or loss of use, of each major member, defined as the back, foot, leg, hand, arm, eye, or hearing.
- The fee is assessed inconsistently and applied at the discretion of the Commission. It is **not** consistently assessed in every case – or even in most cases – but we have seen a recent uptick in assessments.
- There is no prior warning of when the fee will be imposed.

Summary:

The Second Injury Fund is still a viable statutory mechanism, and while the associated fees are not commonly assessed, they are legally enforceable and must be paid when invoiced. Be aware that the fund exists and budget accordingly in cases where you are resolving a claim involving a PPD

rating. If you have any questions or need further guidance, please don't hesitate to contact us.