

**ADVISORY NO. 398**  
**###**

**TOPIC:       PRESERVING WAIVER DEFENSES**

The statute clearly bars a carrier from pursuing a compensability defense sixty days after written notice unless a PLN-1 is filed. The statute does not bar a dispute unrelated to the compensability of a claim.

The Division has unfortunately refused to follow the Court of Appeals as well as the preamble to DWC rules regarding waivers of extent of injury issues if not denied within 60 days of written notice. Notwithstanding this authority to the contrary, DWC will find a relatedness or extent issue to be waived if the carrier failed to file a PLN-11 with 60 days of written notice. To avoid waiver, carriers should reasonably inquire about the extent of injury, and where supported by your review of information in your file, file a PLN-11 substantially setting forth the following boundaries on the extent of the injury accepted and the parts of the potential claim that are excluded.

**Example:**

“Carrier disputes that the compensable injury extends to the shoulders or any other body part. The compensable injury is limited to the soft tissues of the lumbar area only. Based upon the information reported to us, the carrier expressly denies that the injury extends to the bone, cartilage, disc, or structural integrity of the spine. The carrier expressly denies that the injury extends to arthritis or other degenerative or other preexisting conditions of the spine. All other injuries, conditions, diagnoses, and symptoms are denied as not being the result of the compensable accident or the direct and natural result thereof. ”

**Suggested form to be modified as needed:**

“Carrier disputes that the compensable injury extends to \_\_\_\_\_. The compensable injury is limited to the \_\_\_\_\_. [Deny relatedness if appropriate - The carrier expressly denies that the injury extends to the bone, cartilage, or structural integrity of the skeleton other than as expressly accepted.] The carrier disputes that the injury extends to arthritis or other degenerative or preexisting conditions. All other injuries, conditions, diagnoses, and symptoms are denied as not being the result of the compensable accident or the direct and natural result thereof.

This approach has been approved by the Appeals Panel in 000119. Certainly, a carrier will appeal the Division’s interpretation finding waiver in these cases of accepted compensability but denial of a part of the claim, but until that is again repudiated by the Court of Appeals, we recommend this approach to avoid an inadvertent waiver.

FLAHIVE, OGDEN & LATSON