

# Lex and Verum

## The National Association of Workers' Compensation Judiciary

Number VIII, 0410

### Happenings in the World of Adjudications



It has been a fantastic first year for the NAWCJ. There have been so many opportunities to talk with, and learn from adjudicators from around the national workers' compensation community. It is astounding how much we have in common, but even more astounding how different we are. One of the distinctions that came to light this spring is how we approach mediation, which was featured by our own Judge Torrey in his Pennsylvania Workers' Compensation Section newsletter in March (visit <http://www.pabar.org/public/sections/workco/pubs/newsletters/newsletter/sample.asp>). This edition of the LEX and VERUM also features some of Judge Torrey's work on the Medicare Set-Aside situations which is another of the similarities in our responsibilities.

We continue to grow as an association, with adjudicators finding value in the perspectives and collegiality that we may all gain. I was asked recently if the NAWCJ is in "competition" with other organizations, whether judicial or workers' compensation. Unequivocally, we are not. We believe that there are many fine organizations for workers' compensation claims professionals, attorneys, administrators, and others. What we perceive is that there is a unique collegiality among those of us that must adjudicate these disputes. We may share interest and concern about some administrative issues. We may have coincident interests in technological advancement or progress. However, we have unique adjudicatory issues also, and many of us face unique concerns like judicial ethics, witness credibility, writing effective orders and due process guarantees that are not necessarily faced by administrators, attorneys, and others.

What we do believe is that there is a place for an organization of, by, and for the compensation claim adjudicator. We hope we fill that need. We welcome you to be a part of it.

### In this Issue:

Professor Ehrhardt, Work Product Privilege.

Professor Ehrhardt is one of our College speakers this year.

NIOSH, Obesity and the Workplace Study.

News on Medicare Set-Asides.  
News from Workcompcentral.

More on the 2010 Judicial College.  
Judicial Writing  
Pro Se Litigant Issues  
Medical Ratings

### "Second Fridays Seminar" May 14, 2010

Dr. Charles Geraci, Center for Disease Control and National Institute of Health.  
**NANOTECHNOLOGY – A "TINY" PRIMER ON FUTURE AND CURRENT ISSUES.**

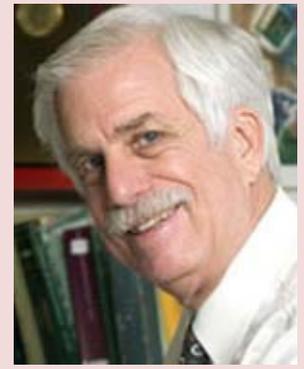
Although nanotechnology appears to be the wave of the future, important questions remain about basic health and safety issues. Some of these issues include: How might workers be exposed to nano-sized particles? How do nanoparticles interact with the body and what are the potential effects? This presentation will give an overview of this potentially revolutionary technology. Make plans now to join us on May 14, 2010 at noon Eastern. This program is free of charge to NAWCJ members.



### Judicial College 2010

Make plans to join us this August. The 2010 NAWCJ College will be an exceptional continuing education, provide unique judicial collegiality, and Dan Marino is a featured speaker. The NAWCJ College is presented in conjunction with the Florida Workers' Compensation Institute, at the Orlando Marriott World Center in Orlando August 15 through 18, 2010. [www.fwciweb.org](http://www.fwciweb.org)

# Pulling Skeletons from the Closet: A Look Into the Work-Product Doctrine as Applied to Expert Witnesses



Charles W. Ehrhardt

*Florida State University Law Review*, Vol. 31:67

Your medical or vocational expert is battling an intense cross-examination. Opposing counsel asks, “Dr. Caligari, you were hired in this case by my colleague and opposing counsel attorney Jones were you not?” “I was,” replies your expert. “And did attorney Jones furnish any documentation to you summarizing the facts of this case or setting forth his opinions about the subject of your testimony?” May you object at this point? On what grounds? Before you answer, you should consider whether this exchange occurred during trial or deposition, during a civil or criminal case, and whether in a state or federal court action; for the grounds and validity of your objections may depend upon all of the above. This brief Article explores the potential for discovering pretrial or revealing on the stand any fact and opinion work-product materials that you or your opponent might have supplied to an expert witness.<sup>1</sup> Though Florida courts have broached the subject, it has received cursory and, in our view, insufficient analysis with accordingly dubious results. There are sound arguments that both fact and opinion work-product transmitted to experts may not only be revealed during trial, but may be discovered beforehand, despite contrary authority from the Florida courts. We hope, at a minimum, to alert you to some interesting and potentially devastating possibilities.

## II. A PRELIMINARY GLIMPSE INTO THE WORK-PRODUCT DOCTRINE

As we survey the work product landscape, it will be important to keep in mind the nature of its essential features, including the policies underpinning its existence. Such a discussion logically begins with reference to the doctrine as originally formulated in *Hickman v. Taylor*.<sup>2</sup>

The plaintiffs in *Hickman*, a wrongful death case, served interrogatories upon the defendant seeking written and oral statements by witnesses who survived the incident as well as records, reports, and memoranda concerning the incident, including those prepared by the defense attorneys.<sup>3</sup> The district court ordered production and the Third Circuit Court of Appeals reversed. The United States Supreme Court affirmed the Third Circuit, noting that “[n]ot even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney.”<sup>4</sup> The *Hickman* Court sought to thwart “attempt[s], without purported necessity or justification, to secure written statements, private memoranda and personal recollections prepared or formed by an adverse party’s counsel in the course of his legal duties.”<sup>5</sup> Though the Court could not deem such materials “privilege[d],”<sup>6</sup> it recognized that:

[I]t is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client’s case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients’ interests.<sup>7</sup>

However, the Court also recognized that “[w]here relevant and non-privileged facts remain hidden in an attorney’s file” discovery could be had if those facts were deemed “essential to the preparation of one’s case.”<sup>8</sup> The Court ultimately held that the plaintiff could make no such showing with respect to witness testimony that was equally available elsewhere.<sup>9</sup> With respect to the oral testimony received by defense counsel, production of which would have divulged his personal memoranda and mental impressions, the Court likewise did “not believe that any showing of necessity can be made under the circumstances of th[e] case,” thus suggesting that such a showing could be made under different circumstances.<sup>10</sup>

The *Hickman* Court’s distinct treatment of witness statements and counsel’s mental impressions was incorporated into the federal rules upon which Florida’s work-product rule is patterned.<sup>11</sup> The Florida rule recognizes the

*Continued, Page 3.*

distinction between what has come to be known as *fact* work-product and what has come to be known as *opinion* work-product, though the rule uses neither term.<sup>12</sup> Fact work product is comprised of “documents and tangible things . . . prepared in anticipation of litigation or for trial by or for another party or by or for that party’s representative, including that party’s attorney, consultant, surety, indemnitor, insurer, or Agent.”<sup>13</sup> Such materials ordinarily may be discovered only upon a showing that the party seeking discovery “has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.”<sup>14</sup> In ordering the production of fact work-product, Florida courts must “protect against disclosure” of opinion work-product, which includes “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.”<sup>15</sup>

Though these are treated as distinct subsets of information, both arise from the unified policy expressed in *Hickman*, fostering thorough case preparation unfettered by freeloading adversaries.<sup>16</sup> At odds with the protective work-product policy, as the *Hickman* Court recognized, is that “[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation” such that “either party may compel the other to disgorge whatever facts he has in his possession” under appropriate circumstances.<sup>17</sup> This tension between the need for unfettered preparation and the right to discover relevant facts is heightened where an expert witness bases her opinion on work product supplied by counsel because the party offering the expert need not reveal the facts or data underlying the expert’s opinion at trial, and those facts or data need not be independently admissible.<sup>18</sup> Rather, this critical information may be compelled only upon cross-examination, and “[i]t is assumed that the cross-examiner has the advance knowledge that is essential for effective cross-examination.”<sup>19</sup>

Accordingly, we find ourselves at the intersection of two compelling but competing interests. Balancing these interests is necessarily difficult, and Florida courts have struggled with the task, though clearly articulated results are scant. We approach the issues categorically. We first consider disclosure of fact work-product at

*Continued, Page 5.*



## Meet Your Board

Governor Ehrlich appointed R. Karl Aumann to the Maryland Workers’ Compensation Commission on February 18, 2005. Mr. Aumann was confirmed unanimously by the State Senate on April 11, 2005.

Born in Baltimore, Maryland, May 17, 1960, Commissioner Aumann graduated from Calvert Hall College High School in 1978. He graduated from Loyola College in Maryland with a B.A. in political science in 1982. He received his J.D. in 1985 from the University of Baltimore School of Law and was admitted to the Maryland Bar in 1986.

He was an associate with the Towson firm of Power & Mosner and later with the Baltimore office of Miles & Stockbridge. During his five years with those firms, Commissioner Aumann specialized in toxic tort, product liability and medical malpractice litigation.

In 1991, he was appointed by President George H. W. Bush as counsel and senior policy advisor to the Appalachian Regional Commission. After Governor Ehrlich was elected to the U.S. Congress in 1994, Commissioner Aumann became his Chief Administrator and District Director until 2003. His responsibilities included office oversight and policy development, with special focus on international relations.

Appointed by Governor Ehrlich to be Secretary of State of Maryland on January 15, 2003, Commissioner Aumann was confirmed unanimously by the State Senate on January 31, 2003. As Secretary, he oversaw the various office division responsibilities, including legal services, international relations and COMAR/Maryland Register. He also chaired the Governor's Subcabinet on International Affairs, the Governor's Commission on Maryland Military Monuments and the Interagency Council for the Nonprofit Sector

He is a member of the Maryland Historical Society, Sons of the American Revolution, and the Wakefield Improvement Association. He has served on the boards of the Community Assistance Network, Historic Hampton, and the Boy Scouts of America. A communicant at the Cathedral of Mary Our Queen parish, Mr. Aumann is a member of the Parents' Association, belonged to the Men's Choir, and helped found the Friends of Cathedral Music.

Mr. Aumann is married to Delegate Susan Langley Mueller Aumann, an accountant and auditor who represents the 42nd Legislative District (Baltimore County) in the House of Delegates. They have two school-age children - Lang and Catherine.

# NAWCJ Judicial College 2010

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Up to Seventeen Hours of Judicial Education available for under \$300.00!

## The 2010 Judicial College Tuition:

### NAWCJ Members

\$200.00 if paid on or before July 31, 2010

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\$240.00 if paid on or before July 31, 2010

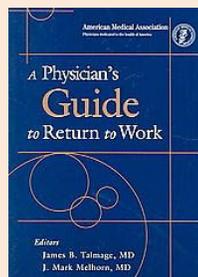
\$265.00 if paid on or after August 1, 2010

NAWCJ Annual Membership Dues are \$75.00; Enjoy Discounted NAWCJ Member Tuition rates by joining NAWCJ now and sending in membership dues or \$75.00 for a full year membership.

You must be a workers' compensation trial or appellate adjudicator or administrator to attend this program.

Contributions, gifts, or dues to the NAWCJ are not deductible as charitable contributions for federal income tax purposes.

## THE STRENGTHS AND WEAKNESSES OF IMPAIRMENT GUIDES



Dr. Melhorn is a nationally recognized expert in medicine and more specifically the causation of injury and return to work dilemmas. A hand surgeon by training and practice, he has edited two books for the American Medical Association: *A Physician's Guide to Return to Work* and *The Guides to the Evaluation of Disease and Injury Causation*. Dr. Melhorn has participated significantly in the editing of the American Medical Association Guides to Impairment that are employed by many states in their workers' compensation statutes and codes. Dr. Melhorn will provide insight on the purpose of such guides, their effectiveness as tools, and the academic debate surrounding the medico-legal decisions that are rendered each day using them.

## LIVE ORAL ARGUMENT



Two actual cases will be argued live before a panel of Judges of the Florida First District Court of Appeal. The decision of the Court will be posted on the Court's website several weeks after the oral arguments take place. Although this presentation is part of Breakout for Adjusters, everyone is invited to attend.



## EFFECTIVELY WORKING WITH PRO SE LITIGANTS

Does it seem like some cases take more of your time, staff time, and resources than others? This program will define some of the difficulties presented by the pro se litigant in workers' compensation. Deputy Chief Judge Poindexter, a national speaker on the subject, will provide insight into the conflict between effective litigation by pro-se litigants and the impartiality of the Judge.

## And Much More, Including:

- Two Live Surgical Procedures
- Professor Ehrhardt on Evidence
- Comparative Law Panel
- John Salatti, Esq. on Effectively Judicial Writing
- Complete program below, page 17 et. seq.

trial and during discovery, followed by a discussion regarding disclosure of opinion work-product at trial and during discovery. We then discuss the relevance of section 90.613, *Florida Statutes*, governing the disclosure of materials used to refresh recollection while testifying.<sup>20</sup>

### III. FACT WORK-PRODUCT

#### A. Disclosure of Fact Work-Product at Trial

Returning to our hypothetical expert Dr. Caligari, let us first suppose that she received materials constituting or including fact work product, and that she relied upon those materials in forming her opinions. Section 90.705(1), *Florida Statutes*, states unequivocally that “[o]n cross-examination the expert shall be required to specify the facts or data” underlying her opinions. In turn, section 90.704 describes the “facts or data upon which an expert bases an opinion or inference” as including “those perceived by, or made known to, the expert at or before the trial.”<sup>22</sup> It follows, then, that any facts or data made known to Dr. Caligari at or before trial must be revealed upon proper cross-examination during trial if Dr. Caligari’s opinion is based upon them.

There is curiously little authority assessing section 90.705 in light of the work-product doctrine, though there is no obvious reason why a work product exception might be read into the statute. Indeed, the Fourth District Court of Appeal has correctly noted:

Cross-examination of experts on relevant and material issues is especially important in view of the rules of evidence that permit experts to testify and express opinions without setting out in detail all of the predicates upon which the opinion or testimony may be based. Those matters are now left largely to be explored on cross examination. Hence if cross-examination is limited . . . an expert’s views and the soundness thereof may go largely untested.<sup>23</sup>

In an analogous situation, the Fifth District Court of Appeal upheld the exclusion of expert witnesses at trial based upon their refusal during deposition to waive the attorney-client privilege with respect to facts and data underlying their opinions. The court reasoned that the experts’ invocation of the privilege impeded legitimate inquiry into their opinions and thus warranted their exclusion from trial.<sup>24</sup>

A similar waiver argument may be made regarding fact work product. Where matters generated in anticipation of litigation are revealed at trial, the *Hickman* policy of unfettered preparation is not implicated inasmuch as all preparation is complete and the otherwise protected work product is voluntarily disclosed, albeit through the conduit of expert testimony. Hence, the protection is voluntarily relinquished. A different approach would undermine the rule that documents to be introduced at trial lose any claim they might otherwise enjoy to work-product status,<sup>25</sup> and would vitiate the provision of section 90.705 that permits cross-examination into the facts and data underlying an expert’s opinion. It would make little sense to preclude cross-examination of an expert for fear of revealing fact work-product upon which she relied where the work product itself would enjoy no such protection.<sup>26</sup> In short, refusing to permit inquiry into fact work-product underlying an expert’s opinion during trial would not further the policies giving rise to the work-product doctrine but would run afoul of the language in section 90.705, which permits broad cross-examination of experts. We may safely conclude, therefore, that an attorney may and should during trial cross examination inquire into and require revelation of fact work-product that underlies an opposing expert’s opinions.

#### B. Discovery of Fact Work-Product Underlying an Expert Opinion

Might the result differ were the cross-examination of Dr. Caligari carried out not at trial, but during a pretrial deposition? The Florida Evidence Code envisions vigorous pretrial discovery to effectuate the broad cross-examination of experts afforded under section 90.705. The Law Revision Council Note to the section states: “The crossexaminer has the opportunity to bring out the supporting data, if he should so desire. It is assumed that the cross-examiner has the advance knowledge that is essential for effective cross-examination. The judge also has the discretionary power to require preliminary disclosure.”<sup>27</sup>

The Florida Supreme Court arguably addressed the discoverability of fact work-product underlying expert opinions in *Reaves v. State*.<sup>28</sup> The *Reaves* case concerned the exclusion of letters “that contained work product” exchanged between a prosecutor and an expert witness.<sup>29</sup> The opinion failed to disclose whether the *work product* at issue constituted fact work-product or opinion work-product, though the statement that the attorney’s letter “contained” work product tends to suggest that it comprised opinion work-product.<sup>30</sup> In any event, *Reaves* upheld the exclusion without citation to authority or further elaboration, stating that the letters were “privileged and not subject to discovery.”<sup>31</sup>

*Continued, Page 6.*

The *Reaves* opinion thus does little to clarify the discoverability of fact work-product upon which an expert bases her opinion, and certainly cannot be said to have settled the matter. To the extent *Reaves* might be read to foreclose discoverability of fact work-product outside of the criminal context, we would disagree with its holding for reasons that will be explained soon enough.<sup>32</sup>

A case easily mistaken as dispositive on this issue is *Whealton v. Marshall*.<sup>33</sup> The document sought through discovery in *Whealton* was an internal law firm memorandum that included “counsel’s opinions relating to potential theories of liability, references to the expert’s opinions, and factual summaries of the patient’s medical records.”<sup>34</sup> The case did *not* involve materials supplied by a party to its expert. As such, *Whealton* stands only for the general proposition that fact work-product *reflecting* an expert opinion is, like all fact work product, discoverable upon satisfying the need and undue hardship test of Rule 1.280(b)(3).<sup>35</sup>

A different question is posed, however, where one seeks not a memorandum *reflecting* expert opinions, but materials actually *supplied to* an expert in anticipation of litigation upon which the expert has based her opinions. A cogent argument can be made along two lines for the discovery of such materials in civil actions. First is the plain language of the rule governing discovery of experts in such proceedings. Florida Rule of Civil Procedure 1.280(b)(4) permits discovery of “facts known and opinions held by experts . . . and acquired or developed in anticipation of litigation or for trial.”<sup>36</sup> Given that fact work-product is defined in Rule 1.280(b)(3) as materials “prepared in anticipation of litigation or for trial,”<sup>37</sup> Rule 1.280(b)(4) expressly contemplates discovery of any fact work-product that might be characterized as “facts known and opinions held by [an] expert.”<sup>38</sup> Likewise, Rule 1.280(b)(3), which governs the discovery of fact work product generally, states that its provisions are “[s]ubject to the provisions of subdivision (b)(4) of this rule.” Rule 1.280(b)(3) thus subordinates its general work product discovery language in deference to the more specific provisions of 1.280(b)(4) governing discovery of facts known and opinions held by experts,<sup>39</sup> implicitly recognizing the importance the Law Revision Council attached to vigorous pretrial discovery of the facts and data underlying a testifying expert’s opinions.<sup>40</sup> Note additionally that the “need and undue hardship” requirement for production of fact work-product is contained in the fact work-product language of 1.280(b)(3), but not 1.280(b)(4). It follows that discovery of fact work-product supplied to an expert is not contingent upon a showing of need and undue hardship. Rather, it is discoverable as a matter of right.<sup>41</sup>

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## Brief Summary of Effective Judicial Writing:

“When judges make decisions of real consequence, we normally expect them to explain themselves. Furthermore, when judges explain themselves, we normally expect them to provide reasons why the colorable arguments of the losing side were rejected.”

Michael M. O’Hear  
FLA. ST. U. L. REV. Volume 36, No. 3

## Your NAWCJ Board of Directors

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There is in addition to the plain language of Rule 1.280(b)(4) a more tortuous, but equally compelling, argument for pretrial discovery of fact work-product relied upon by experts that would apply equally to criminal proceedings. This alternative route hops across the relevant statutes and procedural rules, as one would stepping stones, toward a conclusion of discoverability.<sup>42</sup>

### *C. Conclusions Regarding Fact Work-Product*

In sum, the procedural rules and Evidence Code arguably permit the revelation of fact work-product *known* to a testifying expert (if elicited during discovery) and, in any event, afford discovery of fact work-product *underlying* an expert's opinion (whether during discovery or at trial), with potential rule-specific exceptions in the criminal context. Despite our recognition that broad discovery and cross examination may alter the character, and perhaps the flow, of information supplied by a party to its expert, our conclusions prove most sensible. The Evidence Code does not require an expert to reveal the foundation for her opinions on direct examination. Rather, the Code envisions robust pretrial discovery and effective cross-examination of every ground upon which an expert relies in rendering her opinions before the jury. Given that virtually all materials relied upon by an expert in formulating opinions are generated or prepared in anticipation of litigation, it is difficult to imagine a viable alternative approach. The result also keeps with the broader work-product policy, which affords no protection to matters sought to be introduced at trial.<sup>50</sup>

The foregoing was excerpted from an article originally published in the Florida State Law Review, and is republished here with permission.

Charles W. Ehrhardt is Emeritus Professor at Florida State University College of Law. He authored *Florida Evidence* (West 2009), the leading treatise on the topic, and *Florida Trial Objections* (West 4th ed. 2007), Professor Ehrhardt has been cited as an authority by appellate courts more than 500 times. He taught Torts, Evidence, Trial Practice and Trial Evidence Seminar, and was named Outstanding Professor seven times. After serving as the Ladd Professor of Evidence for 35 years, he earned emeritus status in 2007. He continues to teach Evidence at the law.

#### Citations:

1. The term "expert," as used throughout this Article, refers to testifying experts.

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# Kids' Chance

Robert Clyatt, a workers' compensation attorney from Valdosta, Georgia, founded the first Kids' Chance organization in 1988. Through his work, he had witnessed the life-shattering impact that a serious workplace injury had on the children of seriously or fatally injured workers, who were now faced with the difficulty of having to fund their own education.

With the assistance of the Workers' Compensation Section of the Georgia Bar, Bob Clyatt incorporated Kids' Chance of Georgia and began raising money to fund educational scholarships for the children of injured Georgia workers, so that they could pursue their educational goals.

Kids' Chance of Georgia began reaching out to other states and encouraged and assisted them in establishing their own Kids' Chance organizations. Thanks to their efforts, twenty-five states have organized Kids' Chance programs that are actively providing need-based scholarships to the families of seriously injured workers, and new Kids' Chance organizations are being formed each year.

We estimate that all of these Kids' Chance organizations have collectively awarded over 2,000 educational scholarships since their inception and distributed over \$5,000,000 in scholarship funds to workers' families.

In 2002, the first Kids' Chance conference was held in St. Louis, Missouri, and attending Kids' Chance organizations agreed to meet annually with the goal of forming a national Kids' Chance association.

Subsequent annual meetings were hosted by different state organizations, resulting in the formal incorporation of Kids' Chance of America, Inc. in 2007. That same year, we began operating as a §501(c)(3) organization with the mission of creating, assisting and supporting all Kids' Chance organizations and other similar programs that provide educational opportunities and scholarships for the children of workers seriously injured or killed on the job.

Since our early beginnings in 1988, Kids' Chance has grown and evolved, and we have become a diverse group of employers, insurers, labor, state government, medical care providers, and both plaintiff and defense attorneys, who are working together to make a difference in the lives of all children affected by a workplace injury by helping them achieve their educational dreams.

For more information, visit:

<http://www.kidschance.org/kids-chance-orgs.htm>

2. 329 U.S. 495 (1947).
3. *Id.* at 498-500.
4. *Id.* at 510. *Id.* at 510-11.
5. *Id.*
6. *Id.* at 508.
7. *Id.* at 510-11.
8. *Id.* at 511.
9. *Id.* at 508-09.
10. *Id.* at 512.
11. *See, e.g., Smith v. Fla. Power & Light Co.*, 632 So. 2d 696, 698 n.3 (Fla. 3d DCA 1994) (citing *Cotton States Mut. Ins. Co. v. Turtle Reef Assocs., Inc.*, 444 So. 2d 595, 596 (Fla. 4th DCA 1984)). The federal rule governing experts was substantially amended in 1993. Florida's rule was not.
12. FLA. R. CIV. P. 1.280(b)(3). We refer throughout this Article to *fact work-product* and *opinion work-product*. Federal courts frequently refer instead to *ordinary work-product* and *core work-product*.
13. *Id.*; *see also S. Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377, 1385 (Fla. 1994).
14. *Id.*
15. FLA. R. CIV. P. 1.280(b)(3). We note here preliminarily that discovery of experts is governed not by Rule 1.280(b)(3), but by 1.280(b)(4). The work-product doctrine set forth in Rule 1.280(b)(3) is expressly "[s]ubject to the provisions of subdivision (b)(4) of this rule." This important qualification is discussed at length below. *See infra* text accompanying notes 39, 79-86.
16. *See, e.g., Smith*, 632 So. 2d at 698; *State v. Rabin*, 495 So. 2d 257, 263 (Fla. 3d DCA 1986) (citing *Duplan Corp. v. Moulinage et Retorderie de Chavanoz*, 509 F.2d 730 (4th Cir. 1974)). *But cf. Kathleen Waits, Opinion Work Product: A Critical Analysis of Current Law and a New Analytical Framework*, 73 OR. L. REV. 385, 430 (1994).
17. *Hickman v. Taylor*, 329 U.S. 495, 507 (1947).
18. FLA. STAT. §§ 90.704-.705(1) (2002).
19. FLA. STAT. ANN. § 90.705(1) (West 1999) (Law Revision
20. Section 90.613.
22. Section 90.705 permits inquiry into facts or data *underlying* an opinion, while section 90.704 speaks in terms of facts or data upon which an expert *bases* an opinion or inference. It might be argued that the facts or data *underlying* an opinion are broader in scope than those facts or data upon which an opinion is *based*. It is reasonable, however, to harmonize these sections inasmuch as what underlies an opinion can fairly be said to be its basis, and a court should not find conflict between these sections where it is possible to do otherwise. *See, e.g., McGhee v. Volusia County*, 679 So. 2d 729, 730 n.1 (Fla. 1996).
23. *Dempsey v. Shell Oil Co.*, 589 So. 2d 373, 379 (Fla. 4th DCA 1991).
24. In *Stewart & Stevenson Services v. Westchester Fire Insurance Co.*, 804 So. 2d 584, 588 (Fla. 5th DCA 2002), the court found: [T]he attorney experts' refusal to answer questions and produce documents circumvented [the opponent's] ability to uncover facts or data underlying the opinions of the experts . . . ."
25. *Dodson v. Persell*, 390 So. 2d 704, 707 (Fla. 1980) ("[T]hose documents, pictures, statements and diagrams which are to be presented as evidence are not work products anticipated by the rule for exemption from discovery.") (quoting *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970)).

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## Maryland Agency Action: Maryland Commission takes position on Medicare Set Asides.

A number of jurisdictions have responded to the federal government's intent to enforce the Medicare Secondary Payer Act. Under the Rhode Island Act, for example, the parties in a compromise settlement must state that the interests of Medicare have been considered.

The Maryland Workers' Compensation Commission has now similarly indicated that its commissioners will not approve settlements unless Medicare's interests have been considered. The Commission took this action in emergency regulations effective January 4, 2010. The agency notes these regulations in a new power-point presentation available at the following URL:

[http://www.wcc.state.md.us/PDF/sg\\_ink/MSA\\_Training\\_%2001\\_12\\_2010.ppt#53](http://www.wcc.state.md.us/PDF/sg_ink/MSA_Training_%2001_12_2010.ppt#53)

This skillful slideshow is an up-to-date and exhaustive treatment of the issues surrounding the MSPA, its interface with workers' compensation, and the impending MMSEA. If you keep it as a favorite, you will have an excellent plain-English summary at your fingertips.

Currently, neither the statute nor the Pennsylvania Department of Labor & Industry requires its judges to approve or deny C&R's based upon whether the interests of Medicare have been respected. In practice, however, the parties are keenly aware that the MSPA, and CMS demands, must be satisfied. In addition, when the Medicare eligible claimant is *pro se*, the WCJ will invariably exercise heightened scrutiny of the C&R.

This summary was republished from the Pennsylvania Bar Association Workers' Compensation Section newsletter, March 2010.

<http://www.pabar.org/public/sections/workco/pubs/newsletters/newslettersample.asp>

### Inflection is everything!

MR. SMITH: Q: So, Ms. Rogers, tell me what kind of physical activities you do now during the course of your day.

A: Well, I do a little light housekeeping.

Q: You own a lighthouse?

A: Excuse me?

MR. JONES: No. I think the word "house" is connected with the word "keeping."

MR. SMITH: Oh, man, I'm an idiot!

26. Alternatively, one might say that an expert could never rely at trial upon fact work-product because the expert's reliance during trial testimony upon the otherwise *work-product* materials would divest those materials of their work-product status. The result is the same in either event.

27. FLA. STAT. ANN. § 90.705(1) (1999) (Law Revision Council Note, 1976).

28. 639 So. 2d 1 (Fla. 1994).

29. *Id.* at 6.

30. *Id.*

31. *Id.* In addition to referring generically to "work product," the court failed to explain what it meant by "privileged"; for the term used loosely may mean subject to a privilege that may be overcome upon proper showing, or it may mean not discoverable in any circumstances. Its use does nothing to clarify whether the letters at issue constituted fact work-product or opinion work-product.

32. If the letters at issue in *Reaves* did not constitute or include fact work-product, they necessarily constituted or included opinion work-product which *Reaves*, though anemic in its one-sentence treatment of the issue, held immune from discovery. Given that *Reaves* involved discovery in a criminal proceeding, its conclusion, though terse, would be correct. The discoverability during deposition in a criminal proceeding of opinion work product underlying an expert opinion is addressed below. *See infra* text accompanying notes 93-95.

33. 631 So. 2d 323 (Fla. 4th DCA 1994).

34. *Id.* at 325. The case also addressed summary opinion notes drafted by an expert,

but those were deemed protected under the medical malpractice presuit investigation statute

and thus were not analyzed under the work-product doctrine. *See id.*

35. *Id.* (citing *State v. Rabin*, 495 So. 2d 257, 263 (Fla. 3d DCA 1986)). The matters constituting opinion work-product remained inviolate, of course.

36. FLA. R. CIV. P. 1.280(b)(4).

37. *Id.* at 1.280(b)(3).

38. *Id.* at 1.280(b)(4); *see also* *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377, 1385 (Fla. 1994). *But see* *Fields v. Cannady*, 456 So. 2d 1208, 1208 (Fla. 5th DCA 1984).

39. The pre-1993 federal rule included nearly identical language that was subject to much debate in the *opinion* work-product context.

40. FLA. STAT. ANN. § 90.705 (1999) (Law Revision Council Note, 1976). *See also*

BRUCE J. BERMAN, FLORIDA CIVIL PROCEDURE § 280.3[4][b] (2002).

41. Here again we note that fact work-product supplied to and relied upon by a testifying expert will ultimately be revealed at trial, albeit in the highly refined form of expert opinion testimony. This diminishes any claim of work-product protection that the materials might otherwise enjoy. A question remains whether this logic could extend beyond documentary or other tangible evidence.

42. As discussed below, this *stepping stone* analysis applies equally to the discovery via deposition of opinion work-product underlying the opinions of testifying experts.

50. An additional wrinkle here is whether the facts *known to* an expert or *underlying* an expert's opinion would be limited to the facts themselves or to the source documents, or at least those in the expert's possession, and whether the answer might differ were the documents elicited during deposition rather than trial. On this point, *see generally* CHARLES W. EHRHARDT, FLORIDA EVIDENCE § 704.1 (2002).

## ***Federal lawsuit: Federal authorities file action against parties and attorneys in mass tort settlement where interests of Medicare were allegedly not considered.***

*United States v. Stricker, The Barrett Law Firm, Travelers Ins. Co., et al.*, Civil Action No. CV-09-PT-2423E (filed December 1, 2009) (U.S. D.C. N.D. Alabama 2009). The federal government has filed a lawsuit based on the MSPA. The government named as defendants, plaintiffs, lawyers, and insurance companies who had been involved in mass tort litigation based on the plaintiffs' exposures to PCB's. According to the complaint, the parties did not take into account Medicare's interests when they settled the case, and [some or all] of the plaintiffs had received conditional payments from Medicare.

The complaint can be viewed at the following URL: [http://blog.cuyler.com/wpcontent/uploads/2010/02/USA\\_v\\_Stricker\\_et\\_al\\_Alabama\\_cv-09-pt-2423-e.pdf](http://blog.cuyler.com/wpcontent/uploads/2010/02/USA_v_Stricker_et_al_Alabama_cv-09-pt-2423-e.pdf).

A nice summary can be found at:

<http://www.chadbourne.com/files/Publication/984070bf-0b50-478e-acf7-0046e843539e/Presentation/PublicationAttachment/92d301c2-30fd-467d-b06dbd3188bd2758/Medicare.pdf>.

An up-to-date analysis of litigation, meanwhile, can be found at:

<http://law.lexisnexis.com/practiceareas/Workers-Compensation-Law-Blog/Emerging-Issues--Trends/US-vs-Stricker---US-files-Motion-for-Partial-Summary-Judgment>.

This summary was republished from the Pennsylvania Bar Association Workers' Compensation Section newsletter, March 2010.

<http://www.pabar.org/public/sections/workco/pubs/newsletters/newslettersample.asp>

## **To Abey, or Not To Abey.**

A long, long time ago the word "abeyance" crept into our workers' compensation lexicon. According to *The Free Dictionary* by Farlex, it means "temporarily suspended, on ice, in cold storage, hanging fire." The term does not appear in the Oklahoma statutes.

<http://judgetom.blogspot.com/>



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### **CMS Releases New *Schedule* for Reporting Comp Data**

[04/02/10]

The Centers for Medicare and Medicaid Services (CMS) released a revised schedule for mandatory reporting of data by carriers and third-party administrators on Monday that delays the full launch of program to early next year.

CMS agreed to delay the start-up of mandatory reporting for the fourth time in February. Liability carriers, self-insurers, no-fault insurers and workers' compensation entities are required to begin reporting future-medical settlements and payments under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.

The agency announced that mandatory reporting for workers' compensation, no-fault and liability carriers and self-insured employers will begin between Jan. 1 and May 31, 2011, based on start dates linked to the identification number assigned each required reporting entity (RRE). CMS agreed to the latest delay after the American Insurance Association, the National Association of Mutual Insurance Companies and the Self-Insurance Institute of America warned that carriers were still working through confusion over data reporting requirements and CMS still was adjusting the required fields within its databases.

CMS had originally set the deadline for July 1, 2009, then moved it to Jan. 1, 2010, and then to April 1, 2010. Mandatory reporting by group health insurers started last year, but CMS has found reporting by workers' compensation, liability and other insurers and self-insurers to be far more complicated.

CMS said in the latest notice it has established the registration deadline for self-insurance, no-fault insurance and workers' compensation insurers for this April 5. CMS also posted a revised schedule for continued filings by group health plans.

### **CMS Plans to Launch Web Portal for Set-Aside Reviews**

[03/29/10]

The Centers for Medicare and Medicaid Services plans to launch a web-based portal that will allow electronic submissions of proposed Medicare set-aside agreements by early next year.

Set-aside specialists hope the portal will speed up the agency's 60- to 90-day review process of future medical agreements. Jennifer Jordan, general counsel of the Medval consulting firm in Maryland, said proposed settlements must now be sent to a post office box in Detroit, where a contractor creates an electronic file and ships it along to another contractor for review.

The reviews are not mandatory, but parties in settlements often seek CMS's approval to avoid future litigation if the agency decides the future-medical set-asides were not adequate to protect Medicare's interests. CMS said it plans to launch the Workers' Compensation Medicare Set-Aside Portal during the first quarter of 2011. "We came to this after surveying WCMSA submitters last summer to see if they were interested in a webbased application for the electronic submission of WCMSA proposals," CMS spokesman Peter Ashkenaz said in an email. "Based on the high percentage of submitter interest, we've decided to proceed with development and implementation of a web application."

Ashkenaz said it now takes 15 days or longer for a submitter to receive acknowledgment that CMS has received a settlement proposal and is satisfied with the contents. The web portal will provide "real-time" acknowledgment that all required information has been submitted, he said.

### **'Open Carry' Bill Would Let Comp Judges Take Guns to Work**

[04/02/10]

The Oklahoma Senate Rules Committee has approved legislation to allow individuals who have handgun licenses to openly carry their weapons -- and to allow Workers' Compensation Court judges to take their weapons to work, the Tulsa World reported Thursday.

House Bill 3354, sponsored by Rep. Rex Duncan, R-Sand Springs, and Sen. Anthony Sykes, R-Moore, passed the committee by a vote of 10-2 and is headed for the Senate floor, the newspaper said. Duncan said he believes Oklahoma is one of only six states that have no version of "open carry." HB 3354 also would allow judges on the Oklahoma Supreme Court, Court of Civil Appeals, Court of Criminal Appeals and Workers Compensation Court to carry weapons into the Capitol and buildings in the Capitol complex with courtrooms or judicial offices.

Duncan said he didn't believe most Oklahomans who have gun licenses will carry openly, but would prefer to keep their weapons concealed." However, the bill would "give them some latitude," Duncan said. Sykes called the legislation "a positive statement about how we believe in the Second Amendment in the state of Oklahoma."

# Work, Obesity, and Occupational Safety and Health

Paul A. Schulte, PhD, Gregory R. Wagner, MD, Aleck Ostry, PhD, Laura A. Blanciforti, PhD, Robert G. Cutlip, PhD, Kristine M. Krajnak, PhD, Michael Luster, PhD, Albert E. Munson, PhD, James P. O'Callaghan, PhD, Christine G. Parks, PhD, Petia P. Simeonova, MD, PhD and Diane B. Miller, PhD

Few studies have examined the role of obesity or excess body weight in the modification of risk of occupational diseases and conditions. Henschel reviewed the role of obesity in alteration of the intensity of response to the following 7 occupational hazards—heat exhaustion and heat stroke in hot environments, physiological strain during performance of hard physical work, respiratory strain and disorders during hard physical work, accidents involving equipment operators and other duties, decompression sickness, high altitude tolerance, and pesticide exposures—and concluded that obesity should be considered a significant occupational hazard.<sup>51</sup> However, the cited literature in that paper was quite limited.

Evidence of varying strength suggests that obesity increases the risk of certain occupational diseases or conditions such as musculoskeletal disorders, cardiovascular disease, asthma, and vibration-induced injury. Obesity may also modify physiological responses to neurotoxins and immune responses to chemical challenges, many of which are found at work. Obesity may interact with occupational stress. The effectiveness or availability of personal protective equipment may be limited for obese workers. Also, although the role intake plays in the risk of certain cancers is generally well documented in animals, it is not known the extent to which an interaction occurs with occupational cancers. In the following subsections we review what is known about the effects of obesity or excessive body weight on various occupational diseases or conditions. We also offer hypotheses about potential interactions.

## **Vibration-Induced Injury**

In the United States, approximately 1.5 million workers perform tasks in which they are exposed to upper-limb vibration. Depending on their occupation, 6% to 95% (average, 46%) of the workers exposed to upper-limb vibration will develop hand–arm vibration syndrome (HAVS).<sup>52</sup> This syndrome can be characterized by vasospasms of the peripheral vasculature that result in blanching of the digits (white finger), reductions in thermal and tactile sensitivity, upper-limb weakness, pain, and reductions in fine-motor coordination.<sup>53</sup>

Occupational factors such as exposure duration and amplitude of the vibration exposure serve as risk factors for developing HAVS.<sup>54</sup> In addition, a number of personal health factors such as hypertension and diabetes are correlated with the presence of HAVS-related symptoms.<sup>52</sup> Epidemiological studies that assess body mass demonstrate that the incidence of obesity and diabetes is increased in people with HAVS and other upper-limb musculoskeletal disorders.<sup>55–57</sup> Damage resulting from obesity or obesity-related changes in physiology may compromise muscular, neural, and vascular tissues, making them more susceptible to vibration-induced injury.

## **Work-Related Asthma**

Asthma occurs in 10% to 15% of the adult population and is more common in industrialized settings; it has been estimated that up to 15% of all cases are associated with work-place exposure.<sup>58,59</sup> No studies have addressed obesity as a risk factor in the development of work-related asthma; however, substantial attention has been devoted to obesity as a risk factor for asthma because of the observation of dyspnea in obese individuals.<sup>60–62</sup> In general, excess fat tissue impairs ventilatory functions, although this is thought to be relatively mild except in cases of severe obesity.<sup>63</sup>

Cross-sectional and prospective cohort studies have shown associations between obesity and asthma in children<sup>64</sup> and in women.<sup>65</sup> Associations between obesity and asthma in men are less clear; several prospective studies showed a limited association or showed a stronger association in women than in men.<sup>61,66</sup> However, a recent study indicated that although women show a monotonic association between asthma and BMI, men show a U-shaped relationship, indicating that both extremes of weight are associated with a higher prevalence of asthma.<sup>67</sup> Animal studies are more limited. One study<sup>68</sup> indicated that immune mediators involved in asthma in mice are modulated in mice fed high-fat diets. In other studies, ozone-induced airway responses were increased in obese mice compared with controls.<sup>69</sup>

## **Chemical Immunomodulation**

No reported epidemiological studies have specifically indicated that obesity is a risk factor for microbial infections in adults, but several studies show increased infections in obese adolescents, which suggests that the immune system is affected by obesity.<sup>70,71</sup> Evidence also indicates that wound healing is adversely affected in obese adults.<sup>72</sup> Bhati et al. concluded from their studies that obesity, uncontrolled diabetes mellitus, and female gender are associated with higher infection rates.<sup>73</sup> Chemical exposure in the workplace may lead to altered immune function, including both allergy and immune suppression. Immune suppression can lead to increased susceptibility to infectious agents.<sup>74</sup>

*Continued, page 12*

Laboratory experiments support the biological plausibility of this relationship. Most experimental studies of the effects of obesity on the immune system have focused on the use of *ob/ob* leptin-deficient animal models.<sup>75,76</sup> These animals show pleiotrophic effects on a number of systems in the body, including altered states of immunity. Leptin-deficient mice demonstrate thymus atrophy with the thymic cortex being particularly sensitive. As leptin plays a role in protecting CD4+CD8+ cells from glucocorticoid-induced apoptosis, it may play an important role in chemical-induced immune suppression. Likewise, leptin may play a significant role in the development of allergy and the balance between Th<sub>1</sub> and Th<sub>2</sub> responses. Increased levels of leptin have been shown to support a Th<sub>1</sub> response leading to T cell-mediated disease, whereas low leptin levels are more supportive of Th<sub>2</sub> responses, increased levels of interleukin 4, and potentially immunoglobulin E-mediated disease. Obesity in workers that is not related to mutation of the *ob* gene may be correlated with increased levels of leptin.<sup>75-78</sup>

### Musculoskeletal Disorders

Musculoskeletal disorders are defined as structural damage, inflammation, or pain that results from injuries to nerves, tendons, muscles, blood vessels, or other supportive tissues associated with the musculoskeletal system.<sup>79</sup> Certain workplace exposures are correlated with an increased risk for acquiring a work-related musculoskeletal disorders. These include exposures to repetitive movements, excessive loading, muscle overuse, and vibration. A worker's health status may also affect the risk of acquiring a work-related musculoskeletal disorder. Only a few epidemiological studies have explicitly studied the joint effects of work, obesity, and musculoskeletal disorders. Various musculoskeletal disorders such as carpal tunnel syndrome and osteoarthritis have been associated with increased BMI or obesity in studies that control for work and nonwork risk factors.<sup>80-84</sup> Obesity is also associated with type 2 diabetes. This condition has been linked to physiological changes in the cardiovascular, nervous, and skeletal muscle systems. It could be hypothesized that the pathophysiological parameters associated with obesity will increase the risk of acquiring a musculoskeletal disorder and impair the recovery mechanisms.

Continued, Page 13

# A Look Back at Judicial College 2009



### **Neurotoxicity**

Although no epidemiological studies have investigated the risk of neurotoxicity in workers as a function of BMI, recent studies provide evidence to show that low calorie intake decreases the risk of Parkinson's disease<sup>85</sup> and Alzheimer's disease,<sup>86</sup> whereas increased midlife adiposity serves as a risk factor for developing Parkinson's disease.<sup>87</sup> Together, these data suggest that the nervous system, like other organ systems, is vulnerable to the adverse consequences of obesity. Indeed, over the past decade, anecdotal and experimental data obtained with animals often suggest that rats and mice with increased body mass show exaggerated neurotoxic responses to diverse classes of known neurotoxic chemicals (e.g., organometals, substituted pyridines, substituted amphetamines).<sup>88</sup> Thus, given the linkage between obesity and factors known or suspected to damage the nervous system, it could be hypothesized that obesity may enhance the susceptibility of the nervous system to toxic chemicals found in the work environment.

### **Stress and Stress Responses**

Although there is great interest in understanding the interactions between stress and obesity, most research has focused on the role of stress in weight gain and the determination of whether stress controls where fat is deposited. Occupational studies reviewed earlier support the hypothesis that job stress (from, for example, a low-control and high-demand work environment) is associated with high BMI. Stress alters food choices in humans and shifts it toward energy-dense items that contain saturated fat and sugar.<sup>89</sup> Chronic stress results in deposition of intraabdominal (rather than subcutaneous) fat in humans, nonhuman primates, and rodents.<sup>90</sup> Although intraabdominal fat is considered to be more detrimental to health, information is limited as to how fat deposition patterns affect the biological consequences of stress; however, in humans it has been demonstrated that a greater stress response is found when fat is intraabdominal, even when the person is lean.<sup>91</sup> Intraabdominal stores of fat appear to cause a greater stress response, including the release of glucocorticoids and other stress chemicals. The impact of this heightened activation for brain health is relatively unexplored. However, excess stress is considered to be detrimental to brain health and is associated with conditions such as depression. Furthermore, magnetic resonance imaging studies of the human brain suggest that excessive exposure to stress chemicals such as cortisol in Cushing disease or to extremely traumatic events is associated with shrinkage of brain areas important for cognition.<sup>92</sup>

Experimental work indicates that stress is linked to maladaptive remodeling of the brain, including atrophy of neurons and shrinkage of the areas and elements of the neuron responsible for communication. Remodeling is believed to play a role in links between stress and diseases such as addiction and dementia.<sup>93</sup> Aberrant remodeling is also hypothesized to play a role in depression. It is also known that chemicals associated with the stress response (e.g., glucocorticoids, catecholamines) compromise the activation of pathways responsible for maintaining the structure and function of these same cellular elements. It is not known whether the brain of the obese or overweight person is more susceptible to the impact of stress. An important research question is whether obesity (especially intraabdominal deposition of fat) increases the susceptibility of the brain to stress-induced remodeling. It could be hypothesized that obese persons, especially those with intraabdominal fat, will show elevated stress signaling in the brain and will be more susceptible to stress-induced brain remodeling.

### **Cardiovascular Disease**

The interplay between psychosocial stress at work and cardiovascular disease has been investigated.<sup>34,94,95</sup> Despite various methodological issues, several reviewers and investigators have supported the hypothesis that the psychosocial aspects of work are related to the risk of developing cardiovascular disease.<sup>34,96</sup> Obesity also is a known risk factor for cardiovascular disease, and the question is whether obesity modifies the association between workplace stress and cardiovascular disease.

Another hypothesis of cardiovascular disease development involves occupational risk factors (including carbon disulfide, arsenic, ultrafine dusts, or fumes) that modify atherosclerosis progression through induction of vascular oxidative and inflammatory effects.<sup>97-100</sup> Adipose tissue mass, especially visceral fat, in addition to the endocrine and metabolic dysfunction, is also linked with increased production of proinflammatory mediators.<sup>101</sup> Thus, inflammatory responses mediated by obesity and occupational exposure to chemicals or dusts may interact synergistically to increase the risk of atherosclerosis-related cardiovascular diseases.

*Continued, Page 13*

**Only 125 days until Judicial College 2010!**

### Cancer

Energy restriction has long been known to impact the development of various cancers in animals that were administered chemical carcinogens.<sup>102-104</sup> However, no studies have been specifically identified that explore the relationship of BMI to the development of work-related cancers in occupational cohorts. Despite associations of high energy intake with various cancers such as breast, colon, rectum, kidney, thyroid, and prostate, the more traditional occupational cancers such as lung and bladder cancer were found to be inversely associated with body weight. However, these analyses did not generally account for cigarette smoking or competing causes of death.<sup>103</sup>

### Occupational Safety

Limited research has been done on the impact of obesity on worker safety. A few studies of work-related injuries have identified notable characteristics among injured workers, including increased BMI.<sup>105-108</sup> Sleep-disordered breathing and obesity have been found to be risk factors in traffic accidents among commercial long-haul truck drivers.<sup>109</sup> Various other transportation studies (particularly those that focused on seat belt use) have included BMI as a potential risk factor; however, the studies did not specifically address workers.<sup>110-112</sup>

### Utility of Personal Protective Equipment

Although anthropometric characteristics have been shown to vary among occupations and should be considered in designing personal protective equipment, little information exists on the impact of obesity on personal protective equipment effectiveness or availability.<sup>113</sup> Human physiological variables, including body weight, can affect respiratory performance during respirator tests and use.<sup>114</sup> Body weight has also been a variable in research on fall protection, impact restraints,<sup>115</sup> and the effectiveness of protective clothing.<sup>115,116</sup> Because obesity has been shown to be a risk factor for soldiers training in hot and humid environments, it may also be assumed that this result pertains to workers, especially workers in protective equipment.<sup>117,118</sup>

This is a portion of the original report, which is published at

<http://ajph.aphapublications.org/cgi/content/full/97/3/428>

This is republished here from the public domain. All footnotes and other references are available in the original and are therefore not restated here.

## WE NEED *YOU*, YOUR *WRITINGS*, YOUR *IDEAS*

Do you write about topics that would be of interest to our members? Have you entered a decision in which Judges around the country would be interested? The NAWCJ communicates monthly with more than 400 workers' compensation adjudicators and appellate review officials across the country. If you have ideas for articles or would like to submit a case note or article, contact Hon. John Lazzara at [JJL@NAWCJ.org](mailto:JJL@NAWCJ.org)

### Say what?

Q. Did you ever find in one of those discharge summaries, which you may have received, a notation about a potential serious condition for your patient in a radiology report that was being referred to in the discharge summary, whereby you requested a copy of that report to do follow-up and provide care for your patient?

A. Would you repeat that question again?

Q. I'm not sure I had enough curves in there. Nobody said because you go to law school you can speak clearly.

### Workers' Compensation Resources

National Association of Workers' Compensation Judiciary  
[www.NAWJC.org](http://www.NAWJC.org)

Link to Past Lex and Verum  
[www.nawcj.org/EdArtsandPubs.htm](http://www.nawcj.org/EdArtsandPubs.htm)

Florida Workers' Compensation Institute  
[www.fwciweb.org](http://www.fwciweb.org)

Workers' Compensation Service Center  
[www.workerscompensation.com](http://www.workerscompensation.com)

Judge Tom Talks  
<http://judgetom.blogspot.com/>

Judge Torrey  
<http://www.davetorrey.info/>

The National Institute of Occupational Safety  
<http://www.cdc.gov/niosh/>

### Think about it...

Q. State your name for the record, please.  
OPPOSING COUNSEL: Objection, hearsay.

# THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

## APPLICATION FOR MEMBERSHIP

THE NAWCJ MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. MEMBERSHIP DUES ARE \$75 PER YEAR.  
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Organization: \_\_\_\_\_

PROFESSIONAL ADDRESS: \_\_\_\_\_

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PROFESSIONAL E-MAIL: \_\_\_\_\_

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YEAR FIRST APPOINTED OR ELECTED? \_\_\_\_\_

CURRENT TERM EXPIRES: \_\_\_\_\_

HOW DID YOU LEARN ABOUT NAWCJ? \_\_\_\_\_

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DESCRIPTION OF JOB DUTIES / QUALIFICATIONS FOR MEMBERSHIP:

\_\_\_\_\_

\_\_\_\_\_

IN WHAT WAY WOULD YOU BE MOST INTERESTED IN SERVING THE NAWCJ:

\_\_\_\_\_

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Mail your application and check to: Hon. John J. Lazzara, NAWCJ President  
P.O. Box 200,  
Tallahassee, FL 32302-0200  
850.488.2110 850.922.3661 (Fax)  
Email: [jjl@nawcj.org](mailto:jjl@nawcj.org)

# THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

## APPLICATION FOR ASSOCIATE MEMBERSHIP

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Mail your application and check to: Hon. John J. Lazzara, NAWCJ President  
P.O. Box 200,  
Tallahassee, FL 32302-0200  
850.488.2110 850.922.3661 (Fax)  
Email: [jil@nawcj.org](mailto:jil@nawcj.org)

Warren Buffet said “price is what you pay, value is what you get.” Do not confuse the two. The NAWCJ College 2010 is an exceptional program and an exceptional value. This program delivers diverse national experts in the field at a fraction of the cost of most national programs.

Our 2010 program is presented three sections. Section one is the “New Judges” program. This is intended to ease the transition to public service for new adjudicators. The adjudicatory role presents new challenges to most; the role of adjudicator is far different from advocacy. Likewise, the transition from private employment to government service is challenging in itself. The “New Judge” program is a unique opportunity for adjudicators with less than two years of service to work in a close interpersonal environment with exceptional judges from throughout the country. This program begins Monday morning and concludes in time for the keynote speech of the Workers’ Compensation Institute by quarterback Dan Marino at 11:00 a.m.

The second section begins with Mr. Marino’s speech to the Institute, followed by a transition into the “judges only” program, starting with an informal luncheon and comparative law discussion, followed by an exceptional evidence seminar by Professor Charles Ehrhardt, and capped off with the Code of Judicial Conduct and Judge James Wolf. Every attendee will end this day with valuable “take away” perspectives from extraordinary speakers. The second section continues on Tuesday morning with an all-day program including two live surgeries, Deputy Chief Judge Poindexter will provide tips and guidance on working with pro-se litigants, Dr. Melhorn will address the use of impairment guides as only one of their authors could, Mr. Salatti will provide intensive insight into effective order writing, and there will be a live oral argument before the First District Court of Appeal. The second section will conclude Tuesday evening with a reception for all attendees, NAWCJ members, and associate members.

The final section on Wednesday provides three distinct and intense opportunities. Attendees may choose the multi-state program with specific state breakouts, or the Medicare set-aside program, or the Advanced Mediation Techniques program. Each provides advice and insight from leading experts in these fields.

Don’t let the price fool you. This program delivers unprecedented value. We look forward to meeting you there.

# NAWCJ Judicial College 2010

## Section One New Judges Program

### Monday, August 16, 2010

- 8:30 – 11:00**      **NAWCJ NEW JUDGE PROGRAM**
- 8:30 – 8:45 PM**      **WELCOME AND ANNOUNCEMENTS**  
Honorable John J. Lazzara  
Tallahassee, Florida  
Florida Office of Judges of Compensation Claims
- 8:45 - 9:15**      **ADVOCATE TO ADJUDICATOR**  
Honorable R. Karl Aumann  
Baltimore, Maryland  
Maryland Workers' Compensation Commission
- 9:15 - 9:45**      **JUDICIAL INDEPENDENCE AND RELATING TO THE BAR**  
Honorable David Torrey  
Pittsburg, Pennsylvania  
Pennsylvania Department of Labor and Industry
- 9:45 - 10:15**      **THE MOTION FOR RECUSAL, CONFLICT DISCLOSURE AND THE CODE**  
Honorable Ellen Lorenzen  
Tampa, Florida  
Florida Office of Judges of Compensation Claims
- 10:15 - 10:45**      **TRANSITION TO THE BUREAUCRACY OF STATE GOVERNMENT**  
Honorable David Imahara  
Atlanta, Georgia  
Georgia State Board of Workers' Compensation
- 10:45 - 11:00**      **BREAK AND TRANSITION TO DAN MARINO SPEECH**

The Florida Workers' Compensation Institute (FWCI) also has a morning program. NAWCJ College attendees are welcome to attend these.

- 9:00 – 11:00**      **WORKERS' COMPENSATION CONFERENCE WELCOMING SPEECHES**
- 9:15 - 9:40 AM**      **SCHOLARSHIP AND AWARD PRESENTATIONS**
- 9:40 – 10:00 AM**      **ALEX SINK, FLORIDA CFO**
- 11:00 – 12:00 AM**      **GUEST SPEAKER, DAN MARINO**
- 11:00 - 5:00 PM**      **EXHIBIT HALL OPEN**

# NAWCJ Judicial College 2010

## Section Two Main Program, Day One (Monday)

### Monday, August 16, 2010

#### **11:30 – 1:20 PM    NAWCJ WELCOME LUNCH AND MULTI-JURISDICTION COMPARATIVE LAW PANEL**

Honorable R. Karl Aumann  
Baltimore, Maryland  
Maryland Workers' Compensation Commission

Honorable John J. Lazzara  
Tallahassee, Florida  
Florida Office of Judges of Compensation Claims

Honorable Linda A. Thompson  
Jackson, Mississippi  
Mississippi Workers' Compensation Commission

Honorable Gwendolyn Thompson  
Covington, Louisiana  
Louisiana Workforce Commission

Honorable David Torrey  
Pittsburg, Pennsylvania  
Pennsylvania Department of Labor and Industry

#### **1:20 - 1:30 PM    BREAK**

#### **1:30 - 3:30 PM    EVIDENCE IN WORKERS' COMPENSATION**

Charles W. Ehrhardt, Emeritus Professor  
Florida State University College of Law

The trials and tribulations of evidence, or the tribulations of trial evidence; states differ in their workers' compensation evidentiary standards, rules, and approaches. Professor Ehrhardt will bring the subject to the table with wit and wisdom for dealing with difficult objections to hearsay, authentication, relevance and prejudice.

#### **3:30 - 3:40 PM    BREAK**

#### **3:40 - 4:30 PM    CODE OF JUDICIAL CONDUCT**

Hon. James R. Wolf, Tallahassee, Florida  
Florida First District Court of Appeal

Whether your state applies the Code of Judicial Conduct to you or not, these are great standards to live by on the bench. Judge Wolf brings experience, insight, and clarity to the canons that define appropriate judicial behavior. The Independence of the Judiciary is dependent upon the faith that litigants, counsel, and the public have in the impartiality and fairness of the process. That perception is in turn dependent upon each or our actions every day, and learning to apply the canons to shape the perceptions of your behavior on and off the bench is a great benefit to any Judge.

#### **4:30 - 4:45 PM    BREAK**

#### **4:45 - 5:15 PM    NAWCJ ANNUAL BUSINESS MEETING AND ELECTIONS.**

#### **7:00 - 11:00 PM    RECEPTION AND ENTERTAINMENT**

# NAWCJ Judicial College 2010

## Section Two Main Program, Day Two (Tuesday)

### Tuesday August 17, 2010

**8:45 - 9:45 AM**

#### **LIVE SURGERY**

**Two Live Surgeries: Carpal Tunnel Release And Arthroscopic Meniscus**

#### **Moderator and Speaker:**

Eric G. Bonenberger, MD  
*Orlando Orthopaedic Center*

#### **Surgeries Performed by:**

Carpal Tunnel Release:  
Lawrence S. Halperin, MD  
*Orlando Orthopaedic Center*

#### Arthroscopic Meniscus:

Bryan L. Reuss, MD  
*Orlando Orthopaedic Center*

Wait until you see what we have in store for you this year!!! This just keeps getting better. Watch and learn as two of the most renowned orthopaedic surgeons in Central Florida perform LIVE two of the most common surgeries in workers' compensation claims today. Dr. Lawrence S. Halperin, a board certified orthopaedic surgeon with over 20 years of experience in hand/upper extremity surgery will perform a carpal tunnel release. Dr. Halperin currently sits on the Board of Directors for the American Academy of Orthopaedic Surgery and Florida Orthopaedic Society. Dr. Bryan L. Reuss, a board certified orthopaedic surgeon who specializes in Sports Medicine and has extensive experience in shoulder and knee surgery will perform an arthroscopic meniscus surgery. Dr. Reuss has treated many athletes both in the professional and amateur arena, such as NFL, UFL, PGA, collegiate and high school. Although this presentation takes place as part of the Adjusters' Breakout, everyone is invited to attend.

**9:45 - 10:00 PM BREAK AND TRANSITION**

**10:00 – 10:50 AM THE STRENGTHS AND WEAKNESSES OF IMPAIRMENT GUIDES**

J. Mark Melhorn, M.D.

Wichita, Kansas  
Orthopedic Surgeon, Hand Center

Dr. Melhorn is a nationally recognized expert in medicine and more specifically the causation of injury and return to work dilemmas. A hand surgeon by training and practice, he has edited two books for the American Medical Association: *A Physician's Guide to Return to Work* and *The Guides to the Evaluation of Disease and Injury Causation*. Dr. Melhorn has participated significantly in the editing of the American Medical Association Guides to Impairment that are employed by many states in their workers' compensation statutes and codes. Dr. Melhorn will provide insight on the purpose of such guides, their effectiveness as tools, and the academic debate surrounding the medico-legal decisions that are rendered each day using them.

**10:50 - 11:00 AM BREAK**

*Continued, next page*

# NAWCJ Judicial College 2010

## Section Two

### Main Program, Day Two (Tuesday) Continued

#### 11:00 -11:50 AM EFFECTIVELY WORKING WITH PRO SE LITIGANTS

Mark D. Poindexter, Deputy Chief Judge  
Washington, D.C.  
Office of Administrative Hearings

Does it seem like some cases take more of your time, staff time, and resources than others? This program will define some of the difficulties presented by the pro se litigant in workers' compensation. Deputy Chief Judge Poindexter, a national speaker on the subject, will provide insight into the conflict between effective litigation by pro-se litigants and the impartiality of the Judge.

#### 11:50 -1:00 PM FLORIDA BAR WORKERS' COMPENSATION SECTION JUDICIAL LUNCHEON

#### 1:00 - 2:00 PM ORAL ARGUMENT

##### Panel:

Honorable Paul M. Hawkes, Chief Judge  
First District Court of Appeal  
Tallahassee, FL

Honorable Charles Kahn  
First District Court of Appeal  
Tallahassee, FL

Honorable Joseph Lewis  
First District Court of Appeal  
Tallahassee, FL

Jon S. Wheeler, Clerk  
First District Court of Appeal  
Tallahassee, FL

Stephen M. Nevels, Marshal  
First District Court of Appeal  
Tallahassee, FL

Two actual cases will be argued live before a panel of Judges of the Florida First District Court of Appeal. The decision of the Court will be posted on the Court's website several weeks after the oral arguments take place. Although this presentation is part of Breakout for Adjusters, everyone is invited to attend

#### 2:00 – 2:15 PM BREAK AND TRANSITION

#### 2:15 – 5:00 PM EFFECTIVE LEGAL WRITING FOR JUDGES

**John T. Salatti, Esq.**  
Washington, D.C.  
LA Writers

Many have been credited with the quote "dying is easy, comedy is hard." In the same vein, perhaps adjudicating is easy, writing is hard, and editing is harder still. Judges struggle, sometimes unwittingly, with classic writing conflicts; who is our audience?, how much background is enough or too much? Mr. Salatti will apply years of writing and lecture skill to guide us through a step-by-step process for editing our orders, after which he and the group can discuss how better forethought *preceding* the original drafting may reduce editing time. This program will help us produce clear, concise, and effective rulings of value for the litigants before us, any reviewing courts or agencies, and the broader marketplace we serve.

#### 5:00 – 5:15 PM BREAK AND TRANSITION

#### 5:15 - 6:15 PM NAWCJ RECEPTION

Invited Guests, NAWCJ Members and NAWCJ Associate Members

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday)

#### **Wednesday Breakout Option One:**

**9:00 - 12:00 PM**      **BREAKOUT ON ADVANCED MEDIATION TECHNIQUES FOR MEDIATORS, ATTORNEYS AND ADJUSTERS**

**Moderator:**

Stuart F. Suskin, Attorney  
*State Mediator, Office of the Judges of Compensation Claims  
Gainesville, FL*

**Panel:**

Christine L. Harter, Attorney  
Sheldon (Shelley) B. Forte, Attorney  
Edward Almeyda, Attorney  
Judith S. Nelson, Attorney  
Anthony J. (Skip) Beisler III, Attorney

Mediation has become an integral part of any workers' compensation system. Regardless of the jurisdiction, all cases are mediated in some form prior to the final hearing. This program will address tactics and strategies that have been employed by mediators to deal with difficult situations. The format of the program will be a Q & A session, with a roving moderator in the audience, soliciting audience participation. This program is targeted for mediators, attorneys, adjusters and risk managers/employer representatives who are interested in resolution strategies for difficult cases. The panelists will endeavor to incorporate ethical, cultural diversity, and domestic violence considerations in each topic. This 180 minute program is designed to provide 3.6 hours of general mediation education, with some portion devoted to ethics, domestic violence and cultural diversity. Attendees should consult their state's mediation regulatory agency for CME requirements/hours.

#### **Wednesday Breakout Option Two:**

**9:00 - 3:00 PM**      **MEDICARE BREAKOUT, THE BOLD NEW WORLD OF TAKING MEDICARE'S INTERESTS INTO ACCOUNT**

With millions of baby boomers about to become retirees, an unstable economy and 10% unemployment, continued higher costs for medical services, an unknown and untested federal legislation, and studies indicating Medicare is projected to be insolvent by 2019, the federal government has turned to the Medicare Secondary Payer Act to force litigants to take Medicare's interests into account when monetary funds are being provided to the injured party to cover past and future medical expenses associated with the claimed accident and resulting injuries. This breakout will explore when and how litigants must take Medicare's interests into account, including in-depth panel discussions on mandatory insurer reporting, Medicare conditional payments, and Medicare set asides. The breakout will also explore Medicaid related issues, including resolution of Medicaid liens and the creation and administration of special needs trusts.

**Program Moderator:**

Rafael Gonzalez  
*CEO of the Center for Lien Resolution and the Center for Medicare Set Aside Administration  
Clearwater, FL*

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday), Continued

#### **Wednesday Breakout Option Two:**

##### **9:00 – 9:10 am Introductions**

Rafael Gonzalez  
*CEO of the Center for Lien Resolution and the Center for Medicare Set Aside Administration*  
Clearwater, FL

Michael Wescott  
*NAMSAP President*  
Maitland, FL

##### **9:10 – 10:05 am Taking Medicare's Interests Into Consideration: Mandatory Insurer Reporting**

###### **Panel:**

John Williams, President and CEO  
*Gould & Lamb*  
Bradenton, FL

Mark Popolizio, Attorney  
*Vice-President, NuQuest*  
Longwood, FL

Todd Belisle  
*Vice-President, The Center for MSA Administration, LLC*  
Clearwater, FL

This panel will present a comprehensive overview of the current and projected mandatory insurer reporting landscape as set out by Section 111 of the Medicare/Medicaid SCHIP Extension Act of 2007. The panel will discuss the contextual background of the Act, which entities are required to report to the government, what information is necessary for reporting, the penalties for incomplete submissions or non-compliance, as well as the effects of such reporting on the litigants and their case.

##### **10:05 – 10:20 am Break**

##### **10:20 – 11:10 am Taking Medicare's Interests Into Consideration: Medicare Conditional Payments**

###### **Panel:**

Roy A. Franco, Attorney  
*Corporate Director, Risk Management Services, Safeway, Inc.*  
Pleasanton, CA

Rochelle Lefler, Attorney  
*Corporate Counsel, PMSI*  
Tampa, FL

Floyd Faglie, Attorney  
*The Law Office of John Staunton, PA*  
Clearwater, FL

Panel members will go through a comprehensive overview of Medicare conditional payment subrogation rights. Within this context, the panel will review the governing articles of the Medicare Secondary Payer Act concerning payment subrogation, the conditional payment process and payback timeline, entity responsibility, and the applicable waiver and appeals process.

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday), Continued

#### **Wednesday Breakout Option Two, Continued:**

#### **11:10 – 12:00 pm     Taking Medicare's Interests Into Account: MSA Allocations, Approvals, and Administration**

**Panel:**

Angela Wolfe, RN, Attorney

*Med-Fi*

*Bradenton, FL*

Jacqueline Green Griffin, Attorney

*Eraclides, Johns, Hall, Gelman & Goodman, LLP*

*Jacksonville, FL*

Danny Alvarez, Attorney

*The Center for MSA Administration, LLC*

*Clearwater, FL*

The panel will analyze Medicare Set Aside (MSA) allocations, the MSA approval process, and MSA professional administration. Within this context, the panel will discuss the Medicare Secondary Payer Act and the various CMS Memoranda. Problems arise in cases because after the MSA is submitted to CMS, CMS rejects those numbers and substitutes its own numbers. What do you do now? Our panel of experts will guide you through this maze. Lastly, the panel will address the benefits and drawbacks of private and professional administration and what they mean to the Medicare beneficiary, the employer/carrier, and even the attorneys representing the parties.

#### **12:00 – 1:00 pm     Lunch (on your own)**

#### **1:00 – 2:00 pm     Protecting Supplemental Security Income and Medicaid Eligibility: Special Needs Trusts**

**Panel:**

Jana McConnaughay, Attorney

*Waldoch & McConnaughay, PA*

*Tallahassee, FL*

John Staunton, Attorney

*The Law Office of John Staunton, PA*

*Clearwater, FL*

Leo Govoni,

*The Center for Special Needs Trust Administration, Inc.*

*Clearwater, FL*

Supplemental Security Income (SSI) is a cash assistance program administered by the Social Security Administration, providing financial assistance to needy, aged, blind, or disabled individuals. Medicaid is the federally funded, but state run program, designed to provide medical benefits to needy, aged, blind, or disabled low income people. The panel will provide personal injury and workers' compensation professionals with basic information about both programs. The panel will also provide those in attendance with key information that will assist the parties in resolving claims in which such benefits are at stake, while maintaining eligibility for SSI and Medicaid.

#### **2:00 – 2:15 pm     Break**

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday), Continued

#### **Wednesday Breakout Option Two, Continued:**

**2:15 – 3:00 pm      The Unknown Frontier of Medicare Set Asides: MSAs and Liability Claims**

**Moderator:**

Michael Wescott  
*NAMSAP President  
Maitland, FL*

**Panel:**

Tom Basserman  
*CMS San Francisco Regional Office  
San Francisco, CA*

Sally Stalcup  
*CMS Dallas Regional Office  
Dallas, TX*

Since 2001, CMS memos have made it very clear that in workers' compensation cases, an approved MSA will satisfy the parties' burden to take Medicare's interest into consideration when settling future entitlement to medical care as a result of the claimed accident. However, without any such CMS memos on liability/personal injury cases, the litigants in liability matters have been left to decide for themselves what the thresholds are for liability MSAs, whether MSAs are at all necessary in such matters, and if so, whether they need to be approved by CMS. This panel, made up of CMS regional office managers, will venture into the unknown frontier of MSAs and liability claims.

#### **Wednesday Breakout Option Three:**

**8:45 - 3:00 PM      BREAKOUT ON MULTI-STATE WORKERS' COMPENSATION LAWS**

**Program Moderator:**

R. Briggs Peery, Attorney  
*Swift, Currie, McGhee & Hiers, LLP  
Atlanta, GA*

We are bigger and better this year with new jurisdictions participating. In addition to the Southeastern states of Alabama, Georgia, North Carolina, Mississippi, South Carolina and Tennessee, the state of Texas, a first time member of the Breakout in 2009, is back by popular demand. Furthermore, we are pleased to welcome Louisiana to our group in 2010. Legal experts from this broad spectrum of states will assist claims' handlers and employer management teams in the recognition of important jurisdictional trends, case law, cost saving techniques, and litigation strategies as a means to reduce workers' compensation exposure. Ours is an exceedingly unique format that is not to be missed. At the conclusion of the afternoon general session, the 2010 Multi-State Book of Workers' Compensation Laws will be provided to all break-out attendees. The book includes the workers' compensation statutes from each of the eight (8) participating states.

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday), Continued

#### **Wednesday Breakout Option Three, Continued:**

#### **8:45 - 9:35 AM OPENING GENERAL SESSION: LEGAL TRENDS AND ISSUES FOR 2010**

##### **State Regulators:**

Andrea Pope Roche (invited)  
*Chairperson, South Carolina Workers' Compensation Commission*

Teresa Bullington (invited)  
*Director of Specialists, Tennessee Department of Labor*

Liles Williams (invited)  
*Chairman, Mississippi Workers' Compensation Commission*

Honorable Pamela Thorpe Young  
*Chair, North Carolina Industrial Commission*

Honorable David Imahara  
*Administrative Law Judge, Georgia State Board of Workers' Compensation*

Honorable Rick Thompson  
*Chairman, Georgia State Board of Workers' Compensation*

Honorable Robert Lang  
*Deputy Commissioner for Hearings, Texas Department of Insurance, Division of Workers' Compensation*

Honorable Sheral Kellar  
*Chief Judge, Louisiana Office of Workers' Compensation*

#### **9:35 - 9:45 AM BREAK**

#### **9:45 - 11:30 AM INDIVIDUAL STATE OVERVIEWS WITH Q&A**

(Move into individual breakout rooms)

Alabama – Grand Ballroom 1  
Georgia – Grand Ballroom 2  
South Carolina – Grand Ballroom 3  
Tennessee – Grand Ballroom 4  
Mississippi – Grand Ballroom 5  
North Carolina – Grand Ballroom 6  
Texas – Boston (Hall of Cities)

#### **11:30 - 12:30 PM LUNCH (PROVIDED FOR ATTENDEES BY MULTI-STATE COMMITTEE)**

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday), Continued

#### **Wednesday Breakout Option Three, Continued:**

**12:30 - 2:20 PM**      **REPEAT OF INDIVIDUAL STATE OVERVIEWS WITH Q&A  
(CONCURRENT SESSION)**

**12:30 - 2:20 PM**      **So You Think You Have It Bad? Comparing And Contrasting How  
Differently The Same Legal Issues Are Handled By Multiple Jurisdictions**

Panel Discussion to include attorneys from the participating states.

**2:20 - 2:30 PM**      **BREAK**

**2:30 - 3:00 PM**      **CLOSING GENERAL SESSION: CONCLUDING REMARKS AND  
SUGGESTIONS FROM THE REGULATORS/DOOR  
PRIZES/RELEASE OF 2010 MULTI-STATE STATUTE BOOK**

#### **What they said about NAWCJ College 2009:**

“Fabulous concept and program. Very useful information and wonderful to meet with judges from other states.”

“Overall, the seminar was extremely worthwhile. The hard work of everyone involved is greatly appreciated.”

“Very dynamic and compelling presentation.”

“Top-notch writing instructors like this year are always welcome.”

#### **Last year’s attendees requested:**

“How to best deal with pro se claimants”

“a Multi-state discussion”

“Evidence”

“More judicial writing”

The 2010 Curriculum above delivers all this and much, much more!

# NAWCJ College 2010 Registration Form

Name \_\_\_\_\_ First Name for Badge \_\_\_\_\_

Agency Name (as you wish it to appear on name badge) \_\_\_\_\_ Title \_\_\_\_\_

Business Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_ Email Address \_\_\_\_\_

Continuing Legal Education License Number State/Association \_\_\_\_\_

## Hotel Accommodations:

For your convenience a block of sleeping rooms has been reserved at the Orlando World Center Marriott for this event. Please complete the following information and a reservation will be processed for you. The sleeping room rate is \$163. Cut-off August 1, 2010.

Number of Rooms \_\_\_\_\_  Smoking  Non-smoking Arrival Date 08/\_\_\_\_\_/2010 Departure Date 08/\_\_\_\_\_/2010

Check here if you have special needs that require attention.

## College Registration Fee:

### NAWCJ Members:

\$200.00 if paid on or before July 31, 2010

\$225.00 if paid on or after August 1, 2010

### Non-Members

\$240.00 if paid on or before July 31, 2010

\$265.00 if paid on or after August 1, 2010

Method of Payment:  Check  Mastercard  VISA  American Express  Discover

Credit Card Account Number \_\_\_\_\_ Expiration Date \_\_\_\_\_ Signature \_\_\_\_\_

## Make Checks Payable To:

The National Association of Workers' Compensation Judiciary, Inc.

FEIN # 26-4598530

Online Registration Is Available on May 15, 2009 At [www.nawcj.org](http://www.nawcj.org).

Registration: To register, mail the completed registration form, along with credit card information (VISA/MC/AmX/Discover) or a check made payable to: The National Association of Workers' Compensation Judiciary, Inc., P.O. Box 200, Tallahassee, Florida 32302-0200; fax form to (850)521-0222; or register online at [www.nawcj.org](http://www.nawcj.org). Registration for the Judiciary College will include conference handout materials, access to the exhibit area, Monday night reception, and participation in the Annual Workers' Compensation Educational Conference. Onsite Registration is \$225.00 for NAWCJ members, or \$265.00 for non-members. For more information, contact the National Association of Workers' Compensation Judiciary at (850) 425-8156 or 425-8155.

**YOU MUST BE AN ADJUDICATOR OR ADJUDICATION ADMINISTRATOR TO ATTEND.**

Contributions, gifts, or dues to the NAWCJ are not deductible as charitable contributions for federal income tax purposes.

# NAWCJ College 2010 Scholarship Application

\_\_\_\_\_  
Name

\_\_\_\_\_  
Agency Name Title

\_\_\_\_\_  
Business Mailing Address

\_\_\_\_\_  
City State ZIP

\_\_\_\_\_  
Telephone Number Fax Number Email Address

Required Information:

I certify that I have contacted the agency for which I work and have accurately reflected the funding available below.

	Source	Amount Provided
Tuition	_____	\$ _____
Lodging	_____	\$ _____
Meals.Per Diem	_____	\$ _____
Travel	_____	\$ _____

I am requesting financial assistance from the NAWCJ for the following:

Tuition	_____	\$ _____
Lodging	_____	\$ _____
Other	_____	\$ _____

I have received financial assistance from the NAWCJ in the past for the following programs:

\_\_\_\_\_  
Program Date

\_\_\_\_\_  
Program Date

\_\_\_\_\_  
Judge's Signature Date

Mail your application to: Hon. John J. Lazzara, NAWCJ President  
P.O. Box 200,  
Tallahassee, FL 32302-0200  
850.488.2110 850.922.3661 (Fax)  
Email: [jjl@nawcj.org](mailto:jjl@nawcj.org)