



Number XI, 0710

# Lex and Verum

## The National Association of Workers' Compensation Judiciary

### NAWCJ Annual Meeting

August 16, 2010 4:45 P.M. Eastern  
Marriott World Center, Orlando, Florida  
Grand Ballroom 4-6

#### Nominations Subcommittee:



Honorable David Torrey,  
Chair



Hon. Robert S. Cohen



Hon. David Imahara

### ASSOCIATION SOLICITS NOMINATIONS FOR OFFICERS, AMENDMENTS TO BY-LAWS

The Association's governance is comprised of officers and an appointed board of directors. The group's officers serve two-year terms. As our initial period as an organization (2008-2010) draws to a close, we solicit nominations from the membership for the election of new, or renewed, officers. (All officers may be re-elected without limitation.) The current leadership is as follows:

Hon. John J. Lazzara (Tallahassee, FL), President  
Hon. David W. Langham (Pensacola, FL), Vice-President  
Hon. James R. Wolf (Tallahassee, FL), Secretary  
Hon. Ellen H. Lorenzen (Tampa, FL), Treasurer

The election or re-election of officers will take place at the NAWCJ Judiciary College in Orlando on Monday, August 16, 2010, 4:45 p.m., during the Annual Business Meeting of the Association.

In addition to nominations for officers, we also solicit any recommendations for amendments to the group's by-laws. (To view the NAWCJ by-laws on-line, see <http://www.nawcj.org/OrgByLaws.htm>. The precise duties of the officers will also be found at this link.)

In advance of the meeting, please submit your nomination(s) or recommendation(s) to Judge Torrey, Chair of the Nominations subcommittee. E-mail him at [DavidTorrey@aol.com](mailto:DavidTorrey@aol.com); or write to David B. Torrey, WCJ Judge, PA Department of Labor & Industry, Office of WC Adjudication, 411 7<sup>th</sup> Avenue, Suite 310, Pittsburgh, PA 15219 (Fax: 412-565-2179).



# What Judges Need to Know About Mediation

Robert L. Dietz, Esq.\*

Workers' compensation judges need to be familiar with mediation because it is coming to your state, you just may not know when! Regardless of the current level of involvement of mediation in your state, it is only a matter of time before every case will require mediation before trial.

Different states have different levels of involvement in mediation. Florida was the first state to require a mediation on all issues before a judge can have a hearing on those same issues. A state mediator is provided for each judge's cases, and there is no charge to the parties. Private mediators can also be hired to meet the mediation requirement. Many former judges are in the ranks of private mediators in Florida.

When initiated, mandatory mediation helped clear court dockets that were backed up as much as two years. Within six months of instituting mandatory mediation in all cases, the judicial backlog had been reduced to six months, and within one year, a case could be heard within 90 days anywhere in the state.

Continued management of caseloads is another reason that mandatory mediation has been successful. On average, three out of four cases will resolve without the necessity of having the judge conduct a hearing.

Mandatory mediation's successes are a good reason to become familiar with the process and learn the nuances before it gets adopted in your jurisdiction and catches you unprepared.

The purpose of mediation is for a neutral party to assist the parties in resolving their issues. The mediator's role is one of facilitator. This role differs from that of judge in that the judge must determine the facts to which the law will be applied. An understanding of the facts will assist the mediator in performing their job, but no ultimate finding must be made for the mediator to be successful. In contentious cases this is very important.

The roles are also mutually exclusive. A judge that has mediated a case should not later serve as the fact finder. Information obtained in private sessions are confidential, and the judge should not be put in the position of trying to determine the source of the information learned, either consciously or subconsciously, in making the findings of fact. While this situation might seem similar to a jury being told what they are allowed, and not allowed, to consider, the protection of confidential information cannot be guaranteed. In addition, if there was an unintentional disclosure, the judge would not be in a position to determine the consequences of the revelation and how it would impact the litigation.

The judge's role in deciding each case is one of the reasons that former judges are often criticized when they are in the role of mediator. Their injection of their opinions on factual issues or on how they would rule or on the value of a case may make them appear biased to a party. The challenge for the mediator is to step back and let the parties take the initiative in resolving their issues.

In some jurisdictions, mediators are asked by the parties to stop the mediation once it becomes clear that a settlement will not be reached, and to finish the day serving in the role of arbitrator (fact-finder). Although many of the same ethical issues relate to this arrangement, some states' ethics advisory groups have not had a problem. Approval of the judge may be required for the parties to arbitrate.

A judge may also be involved in the fallout from a mediation that goes awry. Sanctions may be requested for failure to appear, perceived bad behavior, and interpretations of the final agreement. This should not be perceived as the fault of mediation, but rather of contentious lawyers and parties regardless of the setting.

Failure to appear issues relate to the type of the mediation. There are court ordered mediations for which failure to appear would constitute violation of a court order. Judges typically consider the circumstances of the non-appearance to a mediation just as they would for failure to appear at a deposition or a hearing. Voluntary mediations add an additional expense to the parties, the cost of the private mediator. Requests for sanctions regarding failure to attend private mediations typically revolve around payment of the minimum hourly or half day charges of the private mediator.

*Continued, Page 3*

Bad behavior at mediation is described in many ways. The parties will continuously harp on how they were acting in “good faith” while the other party was acting in “bad faith.” This measuring stick only goes as far as the attendance of the parties. Once a party has appeared as required, there is not a basis for evaluating additional behavior in this same context. The reasonableness of negotiations is always in the eye of the beholder. Whether the appropriate decision makers were present or available by telephone can always be debated. And for every issue that doesn’t occur in the opening session, either confidential communications or information from the mediator is required to discuss.

Enforcement of settlement agreement issues results in the majority of the appellate case law on the subject of mediation. The initial documentation of the agreement between the parties is the subject of many cases. When the parties leave the mediation without reducing the agreement(s) to writing, even if the parties intend to complete the paperwork later that day or the next morning, there is always the potential for more litigation. In each case, there may be a party at some later time that wants to enforce the agreement and another party that wants to get out of the agreement, so determination of when the agreement is final is important.

This means that contingencies that are made part of the settlement agreement may make enforcement impossible. Medicare Set-Aside Agreements may create three to six month delays in a mediation agreement becoming final. Another contingency is approval of the final settlement agreement or numbers by the insurance company or employer (meaning that the negotiations were contingent), or the consent of a decision-maker that is not present at the mediation. Some agreements mandate acceptable general release language. Until the later received document is prepared, reviewed and signed, there is no final agreement. All of these contingencies will prevent the enforcement of a settlement if a party backs out before the contingency has been met.

Maintaining confidentiality is another area that can result in litigation. Each party in the mediation maintains a privilege, both during and after the mediation, regarding statements, conduct, and terms of any settlement negotiations that occur during the mediation process.

Res judicata issues may also arise. Ripe issues not raised at mediation can be handled in the same way as issues not raised at a final hearing.

There are many reasons that justify an agreement being vacated. Lack of authority to settle, fraud, deceit, duress, coercion, misrepresentation, overreaching, mutual mistake or ambiguities in drafting are bases for setting aside an agreement. On the other hand, a unilateral mistake where one of the parties changes their mind is not a reason for overturning a settlement agreement. The meeting of the minds has already occurred.

The death of a claimant before receiving the settlement proceeds has resulted in a significant amount of litigation. In cases involving contingency agreements that had not been met at the time of death, the settlement has not been enforceable. A state’s probate and guardianship laws also enter the picture in determining whether the personal representative steps into the shoes of the decedent under these circumstances.

A judge may also have to look outside of workers’ compensation to determine whether an agreement is valid. A general release entered into in another type of case may preclude later pursuit of a workers’ compensation claim.

Hopefully, this article has given you a flavor of the issues that arise out of the use of mediation that a workers’ compensation judge faces in a state with mandatory mediation.

Any system that assists the parties in resolving their issues without the intervention of a judge must be given serious attention and support in the courtroom.

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\* Robert Dietz has defended workers' compensation cases for over twenty-five years throughout the state of Florida. He was board certified by The Florida Bar in 1992 in workers' compensation law and became a Supreme Court Certified Circuit Civil Mediator in 1995. He has mediated over 1,300 workers' compensation cases throughout Florida. He has assisted in establishing mediation programs and is a frequent lecturer and writer on workers' compensation and mediation. Robert has been recognized by his peers in his selection to numerous national and state positions including National Chair of the ABA TIPS Workers' Compensation & Employer Liability Committee and President of the Florida Defense Lawyers' Association. His induction as a Fellow of the College of Workers' Compensation Lawyers in 2008 was only the second Floridian ever selected. He was also invited to join the International Association of Defense Counsel in 2005, and was the first Floridian elected to the national board of directors of the Association of Attorney-Mediators.

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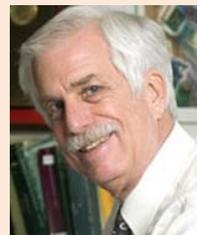
## Three Hours of Effective Judicial Writing!



**John T. Salatti** has taught legal writing for twelve years. He was a Dean's Fellow in the Research, Writing, and Advocacy Program at Emory for four years. He also served on the *Emory Law Journal* for four years, two of them as an Associate Editor. From the *Journal*, he received the Red Pen Award for Excellence in Editing and the first Distinguished Service Award. In response to regular requests for his writing expertise, Mr. Salatti joined forces with Professor Terrell and formed LAWriters. In addition to his writing consulting, Mr. Salatti is a private practitioner, mediator, and mediator trainer.



## He Wrote the Evidence Book!



Florida State University Professor Charles Ehrhardt wrote Florida Evidence, the leading treatise on the topic, and Florida Trial Objections. He has been cited as an authority by appellate courts more than 500 times. He taught Torts, Evidence, Trial Practice and Trial Evidence Seminar. After serving 35 years as the Ladd Professor of Evidence, he earned emeritus status in 2007, but continues to teach. He has served as a commissioner to the National Conference of Commissioners on Uniform State Laws, as faculty of the National Judicial College and the Federal Judicial Center. He has been a visiting professor at University of Georgia and Wake Forest.

## And Much, Much More, Including:

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- Code of Judicial Conduct

# The “Great Recession” and Workers Compensation: Assessing the Damage and the Road To Recovery

By Robert P. Hartwig, PhD, CPCU • President and Economist  
Insurance Information Institute

*“Let’s be blunt. The global financial crisis that spawned the recent “Great Recession” inflicted massive, and in some cases irreparable, damage to the United States economy. Entire industries buckled under the strain—cutting loose millions of workers whose jobs will, in many cases, never return.”*

It will take the better part of the new decade simply to backfill the crater left by the economic debacle of the decade just ended. Good-bye and good riddance to the “00s.”

## **SOLVENCY AND RESILIENCY: NEVER IN QUESTION**

No industry was spared the economic pain of the past few years, and property/casualty insurance was no exception. Yet the property/casualty insurance industry demonstrated extraordinary and uncommon resilience throughout the course of the crisis. Between January 2008 and December 2009 nearly 170 banks—but not a single property/casualty insurer—succumbed to the financial upheaval.

Still, there’s no question that the effects of the crisis were profound and that the recovery will be slow and halting. Few lines of insurance were as impacted as workers compensation. The solvency of workers compensation insurers was never in doubt. No claim went unpaid because of the crisis. Instead, the major concern is that the workers compensation exposure base—payrolls—took a tremendous hit during the crisis. Payrolls, of course, derive from employment, and the fast and furious pace of job losses in 2008 and 2009 put workers compensation squarely in the eye of the economic storm.

## **ASSESSING THE DAMAGE**

Workers compensation is among the largest and most important lines of insurance, accounting for 8.4% of all premiums written in the industry and 16.5% of all commercial insurance premiums in 2008. Declining payroll exposure and an unrelenting soft market combined to drive direct written premium down by \$8.5 billion, or 8.4%, to \$42.7 billion in 2008 from \$51.1 billion in 2007, according to A.M. Best. And the harsh economic environment and continued soft market conditions guarantee another steep drop in premium income for the year just ended.

The Great Recession, as it has come to be known, began in December 2007. Though the recession officially ended in mid-2009, job losses continued through year’s end. All told, 7.1 million jobs were lost over those two terrible years as the unemployment rate soared from 4.9% to a peak of 10.2% in October 2009—the highest reading since April 1983 and among the highest rates of unemployment since the Great Depression.<sup>1</sup>

But the unemployment rate represents only a half truth when it comes to ascertaining the full impact on the workers compensation line. Taking into account part-time workers who would prefer to be working full-time, along with so-called “discouraged workers”—those who stopped searching for work out of futility—unemployment reached 17.5% of the labor force in October (Exhibit 1). In other words, approximately one out every six people who wanted to work was either unemployed or underemployed.

This astonishing and tragic underutilization of labor resources had a corresponding impact on the workers compensation exposure base. Wage and salary accruals—a proxy for payrolls—declined by 3.6% (on a seasonally adjusted annualized basis) between the third quarter of 2008 and the second quarter of 2009. In dollar terms, the decrease equates to a decline of \$234 billion in wages and salaries, directly impacting workers compensation exposure.

*Continued, P. 6*

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In the post-World War II era, the drop is second only to the 4.4% plunge in payrolls that occurred during the recession of 1948–1949. It is notable that during the 2001 recession, wage and salary accruals fell by just 0.5%. In the 1990–1991 recession, accruals merely slowed to post a 2.1% gain but never turned negative. Even during the deep recession of 1981 and 1982, exposure growth slowed to 3.5% but never actually declined. The reason is that the early 1980s were a period of "stagflation," meaning that prices and wages continued to rise even as employment fell sharply.

In 2009, the US economy actually experienced mild deflation, which severely tempered wage gains.

### **WORKERS COMPENSATION EXPOSURE: THE LOST DECADE?**

How long will it take for the exposure loss from the Great Recession of 2008 and 2009 to be recouped? That is a very difficult question to answer and one that depends critically on assumptions about job and wage growth over the next several years. The trajectory of job growth, of course, depends in turn on countless other factors—most importantly, growth in the economy overall. That being said, making the simple assumption that job growth proceeds at a pace consistent with that experienced during the most recent expansion suggests a painfully long recovery period, with job losses not being fully recouped until late 2016. Wage gains will do little to help fill the workers compensation exposure gap. Stubbornly high unemployment implies significant slack in the labor markets, giving workers little bargaining power. Also, unlike the early 1980s, inflation remains subdued—keeping the lid on wage demands including collective bargaining agreements with cost-of-living adjustment provisions.

### **IMPACTS OF THE SOFT MARKET ON WORKERS COMPENSATION PREMIUM VOLUME**

Loss of exposure was not the only source of premium decline for workers compensation insurers. Soft market conditions compounded the drop in exposure as workers compensation rates continued to tumble throughout the crisis. Indeed, workers compensation prices began to fall years before the crisis, beginning their descent in the third quarter of 2004. The third quarter of 2009—with its 4.6% decline in renewals during the quarter—marked the 21<sup>st</sup> consecutive quarterly decline in workers compensation prices. Although the pace of decline is much less than what it was two years ago, the cumulative impact of a soft market, which is now into its sixth year, is enormous.

*Continued, P. 7*

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## We Thank Our Board of Directors 2008-2010



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## ON THE SLOW ROAD TO RECOVERY, UNDERWRITING PROFITS WILL DRIVE SUCCESS

The long-awaited recovery of the workers compensation exposure base will begin in 2010 but will remain at the mercy of forces beyond the control of insurers. Businesses decide how many people they will employ and what to pay them. Government policies and programs, such as recent healthcare legislation and corporate tax policy, influence those decisions. Some of these may prove to be helpful, others a hindrance. While there are reasons to be optimistic about a resumption of growth in the workers compensation exposure base in the year ahead, key growth engines remain in low gear. The seizure of credit markets, the hallmark of the recent crisis, choked off credit for the nation's biggest creators of jobs—small and medium-sized businesses (also known as the "middle market" among commercial insurers). The lack of credit to this critical segment of the US economy continues to stymie job growth.

With a limited ability to grow exposures and greatly diminished investment earnings across all lines of insurance, specially longer-tailed lines such as workers compensation, the focus—at least for the first half of the 2010s—must be on underwriting profitability. Generating consistent underwriting profits is the only way to earn risk-appropriate rates of return in the current slow growth, low investment yield environment. Insurers of yore knew this fact and took it to heart. The property/casualty insurance industry earned underwriting profits in 13 of the 15 years from 1945 through 1959—a period much like today, marked by repeated severe labor market shocks and interest rates kept low by government policies.

The decade ahead will be a challenging one for workers compensation insurers. About that there is little doubt. Every decade tests the industry in new and unforeseen ways. Ten years ago, no one foresaw the trauma and challenges that events such as the September 11, 2001 terrorist attacks would bring. Recovery from the financial crisis is just one of many tests that will have to be met. Adhering to a philosophy of underwriting profitability—"the wisdom of the ancients"—is a sound way to meet the challenges of the new decade.

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\*Robert P. Hartwig, PhD, CPCU, is the president of the Insurance Information Institute. Dr. Hartwig previously served as director of economic research and senior economist with NCCI. He has also worked as a senior economist for the Swiss Reinsurance Group and as senior statistician for the US Consumer Product Commission.

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## We Thank Our Board of Directors 2008-2010



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

*"A judge rarely performs his functions adequately unless the case before him is adequately presented."* Louis D. Brandeis.

*"About half the practice of a decent lawyer consists in telling would be clients that they are damned fools and should stop."* Elihu Root.

*"Everyone is a prisoner of his own experiences. No one can eliminate prejudices, just recognize them."* Edward R. Murrow.

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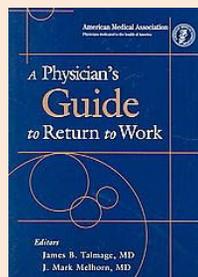
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NAWCJ Annual Membership Dues are \$75.00; Enjoy Discounted NAWCJ Member Tuition rates by joining NAWCJ now and sending in membership dues or \$75.00 for a full year membership.

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 15 et. seq.
- Advanced Medicare Implications



# At-home Injuries Suffered by Telecommuters

Honorable David Torrey\*

By many accounts, the number of employees working at home, typically in home offices made practical by Internet connections, has increased significantly in the last few years.

For an excellent discussion, see, *Wait v. Travelers Indemnity Co. of Illinois*, 240 S.W.3d 220 (S. Ct. Tennessee 2007). See generally Gabel & Mansfield, *On the Increasing Presence of Remote Employees: An Analysis of the Internet's Impact on Employment Law as it Relates to Teleworkers*, 2001 University of Illinois Journal of Legal Technology & Policy 233 (2001); Dutrow, *Working at Home at Your Own Risk: Employer Liability for Teleworkers Under the Occupational Safety and Health Act of 1970*, 18 Georgia State University Law Review 955 (2002).

It is, of course, well established that a fixed-situs employee who chooses to take work home, on a voluntary basis, is not considered in the course of employment. Accordingly, an injury suffered by such a worker during travel to and from the office while transporting such things as a file or work apparatus, and during the actual work at home, is usually not conceived of as "arising in the course of employment and related thereto." See, Little, Eaton & Smith, *Cases and Materials on Workers' Compensation*, at 197 (West 5th ed. 2004) (reviewing cases and noting that majority approach is to exclude such cases).

The worker, on the other hand, who labors on a part-time or full-time basis in a home office, is in a different category altogether. See Little, Eaton & Smith, *Cases and Materials on Workers' Compensation*, at 197 (West 5th ed. 2004) ("Injuries that employees suffer while actively working at an in-home business situs are compensable, but injuries caused by general premises risks are disputable.").

The home office for this category of worker should be considered an extension of the employer's premises. (For a discussion of the meaning of "premises" under §301(c)(1) of the Act, 77 P.S. §411(1), see §4:71 et seq.).

It is submitted that, in general, the test of compensability should not be any different for telecommuters (or others working at home offices) than it is for employees who commute and have their workplace on-site. This is the position of a highly nuanced scholarly article on the issue. See, *Swink, Telecommuter Law: A New Frontier in Legal Liability*, 38 American Business Law Journal 857 (2001).

The author's "summary of workers' compensation law to be applied by analogy to telecommuters" is highly persuasive. While the author is speaking of workers' compensation laws in general, Pennsylvania statutes and court precedents support this analysis:

"The current status of the law is as follows: If telecommuters are en route to pick up or drop off materials to their employers' worksite, the traveling employee exception will apply and injuries suffered either going to or coming home will be covered. If they are conducting personal errands during the same timeframe as dropping off or picking up materials, under the dual purpose doctrine, (meeting the business purpose requirements) any injuries suffered while on personal business will be covered....

[C]learly, if telecommuters are injured on the premises ... (at home) while they eat/rest/take breaks, any injury suffered during the time period will be covered just as if the employee were performing such acts off the premises if such acts are reasonable, aid in the efficient performance or personal necessity or comfort of the employee, and are in some way, meaningfully limited, controlled or foreseeable by the employer. Such activities taken in "preparation of" or "incidental to" work activities are compensable as are injuries occurring during the actual performance of the employer's work."

Swink, 38. See also, Duckworth, *The Need for Workers' Compensation Law in the Age of Telecommuters*, 5 Journal of Small & Emerging Business Law 403 (2001).

Continued, P. 10

Both of these articles discuss at length the leading case, Ae Clevite, Inc. v. Labor Commission, 996 P.2d 1072 (Utah Ct.App.2000). In that case, the claimant was rendered quadriplegic when he slipped and fell on ice on the driveway of his home. He was, at the time, employed as district sales manager for his company, working out of his Salt Lake City home. He worked at home because the company did not have an office in that city. His claim was found compensable in light of evidence that he was clearing ice at the time, in expectation of delivery of a large package for use on a business trip.

For a 2007 case on the issue, see, Wait v. Travelers Indemnity Co. of Illinois, 240 S.W.3d 220 (S. Ct. Tennessee 2007) (executive office of charity, who worked in home office, was in the course of employment when intruder entered home and assaulted her; however, injury was from neutral source and could not be said to have arisen out of employment).

Pennsylvania produced a telecommuter case in 2006. The court recognized that a worker laboring at a home office, with the employer's permission or acquiescence (this writer's conceptualization), is working at an extension of the employer's premises. Thus, when the worker took a "personal comfort" break and fell down the stairs, she was still considered as having suffered an injury arising in the course of employment. Verizon Pennsylvania, Inc. v. W.C.A.B., 900 A.2d 440 (Pa.Cmwlth.2006).

The court conceptualized the claimant as having a stationary job at "a fixed location approved by employer as her secondary work premises." The claimant was, hence, on the premises at the time. In addition, the claimant had not "abandoned" her employment on the premises by going upstairs to get a glass of juice. To the contrary: "[T]here is a well-established 'personal comfort' doctrine under which an employee who sustains an injury during an inconsequential or innocent departure from work during regular working hours, such as going to the bathroom, is nonetheless considered to have sustained an injury in furtherance of the employer's business... ." Verizon.

Although relying principally on Pennsylvania precedents and statute, the court also cited older cases dealing with at-home telephone operators. See, Bremner v. Industrial Commission, 63 Ohio App. 387, 17 Ohio Op. 128, 27 N.E.2d 164 (7th Dist. Geauga County 1938); Sheets v. Glenwood Telephone Co., 135 Neb. 56, 280 N.W. 238 (1938).

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\*Dave Torrey, creator and author of the four-volume treatise *Pennsylvania Workers' Compensation: Law & Practice* (West 3rd ed. 2008), is a Workers' Compensation Judge for Allegheny County, Pennsylvania. He was appointed to his position during the Casey Administration. He is also a member of the Department of Labor & Industry WCJ Rules Committee. Since 1996, Dave has also been an Adjunct Professor of Law at the University of Pittsburgh School of Law, and a preceptor in the school's Student Externship Program. He has published seven law review articles dealing with workers' compensation topics, and he lectures frequently on the subject.

# In Memoriam

Hon. Joseph Farrell

December 18, 1950

July 7, 2010

Florida Judge of Compensation  
Claims



Judge Joseph Farrell, ORL, has passed away. I did not know Judge Farrell well, and that troubled me as we spoke over the last year. I have come to find though that few knew him well, and most feel that he was a very private person. Joe was an anachronism in some ways; he did not particularly like being a lawyer, but was exceptional at it anyway. A graduate of West Point, who resisted conformity, was playful and even a bit rebellious. Practicing at a large defense firm with a dress code years ago, he would hang a tie around his neck in conformance with the letter of the law, but declined to tie it. A Claimant's lawyer, a Carrier's general counsel, a mediator, a professor at Barry University Law School, and a Judge; he told those close to him that being a JCC was the "best job I ever had." He told some that he liked it so much he would do it "for free." Those that knew him though, knew he felt that way about teaching law also. A man from modest beginnings, his father a tool salesman and his mother a homemaker, Joe was a kind, compassionate person that could become a fierce advocate when necessary. Many knew of his love of Jim Morrison's music, and remember him constantly quoting "the future's uncertain and the end is always near." He apparently knew better than any of us. I wish I had known him better. We are fortunate to have known him at all and will miss him.



## BP Claims Include Injuries and Illness, but Comp Questions Linger

- By Michael Whiteley, Eastern Bureau Chief

BP has established an online system that accepts claims for injuries and illnesses in connection with the Deepwater Horizon explosion and oil spill, while questions remain over the scope of the filing process through the third-party administrator hired by Louisiana Gov. Bobby Jindal.

National workers' compensation expert and New Jersey attorney Jon Gelman posted the link to BP's filing system on his website Friday but warned that where and how injury claims would be paid for the more than 25,000 clean-up workers on the Gulf coast remains a mystery. "I don't know where the perimeter ends or begins, and, as the federal programs roll out, they're going to encroach more and more upon workers' compensation," Gelman said in an interview. "Workers' compensation has been silent. The parties have been silent." "There has been no activity outwardly to coordinate it," Gelman said. "Unless we see a formulated plan, it remains a gray area," Gelman said.

BP has agreed to fund a \$20-billion escrow account to be managed by Kenneth Feinberg, President Barack Obama's "pay czar" and the former special master of the 9/11 Victims Compensation Fund.

During interviews with major media outlets, he has focused on payments from the fund to cover property damage and lost income. The New York Times reported recently the \$20 billion would contain little money for injured workers.

A BP spokesman told WorkCompCentral that the oil company is advising private contractors to obtain workers' compensation coverage and they will be reimbursed. The company has declined to provide further information on its coverage under state workers' compensation laws or federal maritime law.

Jindal announced last week he hired Illinois-based Cannon Cochran Management Services Inc. (CCMSI) to act as a third-party administrator to handle Louisiana claims from the oil spill. Lauren Russ, CCMSI's outside public relations consultant, said Monday the firm held a conference call with Louisiana officials on Friday but still has not resolved what types of claims it will be handling. Russ said the scope of CCMSI's contract has not been resolved because Louisiana still has not determined its relationship to Feinberg and the escrow account. But CCMSI does not expect to be handling workers' compensation claims, she said.

Jindal's office didn't return phone calls Friday and Monday. Russ said CCMSI has scheduled another conference call with state officials today. Jindal's office and officials in New Orleans also didn't respond Monday to questions raised by The New Orleans

Times-Picayune last summer over the TPA's use of an unlicensed private detective to investigate claims filed by injured city workers.

The newspaper reported in July that CCMSI paid New Orleans detective Dwight Anderson \$522,000 in 2008 and 2009 but fired him after learning he had let his license lapse in 2006 and was convicted of income tax fraud and obstruction of justice the following year. The newspaper also reported that Alexander had expunged a conviction on 17 counts of filing false public records to sell gold jewelry to pawnshops two decades ago. Alexander told the newspaper he wasn't required to have a license because he worked for a single employer and said he'd done 98% of CCMSI's work for the City of New Orleans. "I can say Dwight Anderson is not and never was an employee of CCMSI," Russ said Monday.

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*This Article ran on June 29, 2010 on Workcompcentral.com and is reprinted here with permission of the publisher of that site. Workcompcentral.com is a singular resource covering developments in workers' compensation throughout the country.*



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

NAME: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

OFFICIAL TITLE: \_\_\_\_\_

Organization: \_\_\_\_\_

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

\_\_\_\_\_

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

ALTERNATE E-MAIL: \_\_\_\_\_

PROFESSIONAL TELEPHONE: \_\_\_\_\_ Fax: \_\_\_\_\_

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

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

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

\_\_\_\_\_

DESCRIPTION OF JOB DUTIES / QUALIFICATIONS FOR MEMBERSHIP:

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**THE NAWCJ ASSOCIATE MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. ASSOCIATE MEMBERSHIP DUES ARE \$250 PER YEAR.** Contributions, gifts, or dues to the NAWCJ are not deductible as charitable contributions for federal income tax purposes.

NAME: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

Firm or Business: \_\_\_\_\_

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

\_\_\_\_\_

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

ALTERNATE E-MAIL: \_\_\_\_\_

PROFESSIONAL TELEPHONE: \_\_\_\_\_ Fax: \_\_\_\_\_

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

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:**

**8:45 - 4:00 PM      BREAKOUT ON ADVANCED MEDIATION TECHNIQUES FOR MEDIATORS,  
ATTORNEYS AND ADJUSTERS**

**(PRE-REGISTRATION IS REQUIRED. REFER TO REGISTRATION FORM ON PAGE)**

This will be an exceptional opportunity for continuing education from masters in their fields, including Circuit Civil and Family mediators, lawyers, and mental health counselors. This one-day Continuing Mediation Education program will be presented in 1.5 credit-hour sessions. Every attendee will be able to attend five of the eight courses offered during the day, including all of the ethics, domestic violence, and cultural diversity required credits. In addition, claims personnel will continue to develop skills in the process of mediating issues.

**8:45 - 10:00 AM      SESSION ONE, SELECT FROM THE FOLLOWING:**

#### **20 COMMANDMENTS TO WHAT TO DO AND WHAT NOT TO DO**

Richard Wack, Attorney and Circuit Civil Mediator  
Winter Park, FL

This entertaining perspective is brought to you from Richard's experiences over 35 plus years of practicing law and mediating cases throughout Florida. There is very little out there that he has not run across at least once. Some tips may be reminders, but some will be new tools that you can file away to use in your daily mediation practice. This breakout is "general" credit. Recommended for: All mediators and claims personnel.

#### **PROFESSIONALISM AND THE CHALLENGES OF OUR DIGITAL AGE**

Carl Zahner, Attorney and Director Florida Bar Center for Professionalism  
Tallahassee, FL

Carl is a long time champion of professional practice and ethical interaction. This program will provide insight concerning the intrusions of the digital age into litigation, through Facebook, Twitter, and beyond. Carl will focus on the threats posed ethically and professionally and equip you to deal with lawyers and parties that rely on evidence or inference from these sources. He will also address restrictions on mediator marketing. This breakout is "ethics" credit. Recommended for: All mediators.

#### **DEALING WITH THE INTIMIDATION, VIOLENCE AND THEIR CONSEQUENCES**

Tania R. Schmidt-Alpers, Attorney and Circuit Civil and Family Mediator  
St. Augustine, FL

Tania is a divorce attorney and mediator with extensive multi-state legal experience. This program will focus on the ways domestic violence interferes with lives and with resolution of disputes, both within family law cases and more generally. She will direct you to hints and signs of such activity, as well as, counsel you on when and how you confront the subject in the course of working towards resolution and conclusion. This breakout is "domestic violence" credit. Recommended for: All mediators and claims personnel.



# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday)

**11:30 – 1:00 PM      GENERAL SESSION AND LUNCH (PROVIDED FOR PRE-REGISTERED ATTENDEES OF MEDIATION BREAKOUT (DESSERT IN EXHIBIT HALL))**

#### **THE USE OF HUMOR IN MEDIATION – IT’S SERIOUS BUSINESS**

Ross W. Stoddard, III, Attorney –Mediator  
Irving, TX

Is laughter really the best medicine? Every experienced mediator has encountered spots during mediations where the use of humor has either worked very well – or NOT. Ross will enlighten us on some of the nuances of the use of humor during mediation, and offer some tips and suggestions of how -- and when -- to use it. This one-hour “general” credit program is presented by one of the founding directors of the Association of Attorney-Mediators and one of the most in-demand speakers in the country on the topic of mediation.

**1:15 – 2:30 PM      SESSION THREE, SELECT FROM THE FOLLOWING:**

#### **BREAKING IMPASSE AND THE MARTIAL ARTS: ADVANCING AS A KICK #\$\$% MEDIATOR**

John W. Salmons, Attorney and Circuit Civil, Family and Federal Mediator  
Ft. Lauderdale, FL

This highly interactive session trains mediators in conflict resolution from the perspective of an experienced mediator and martial artist. Learn how to defend yourself from declaring the dreaded “impasse.” John is a Shodan in the Cuong Nhu Oriental Martial Arts Association and Past President of the Florida Academy of Professional Mediators. This session is “general” credit. Recommended for: All mediators.

#### **MEDIATOR ETHICS REGARDING THE CASTAWAYS: HUMAN INTERACTIONS, THEIR PERILS, AND MEDIATION**

Michael Orfinger, Attorney and Circuit Civil Mediator  
Daytona Beach, FL

Sit right back and you’ll hear a tale, a tale of a fateful trip. Imagine the conflicts among seven stranded castaways on a deserted isle for an extended time. Michael brings a wealth of experience and insight to the ethical considerations of human interaction, person to person and in groups. This amusing approach to examining human interaction dynamics will give you tools to manage those interactions through the mediation process. This breakout is “ethics” credit.

#### **WHAT DO I DO WHEN .....?**

Ross W. Stoddard, III, Attorney-Mediator (civil & probate)  
Irving (Las Colinas), TX

Mediators often experience ethical dilemmas and difficult situations during mediations, putting them between the proverbial “rock and a hard place.” This highly interactive session will cover some of the challenging issues which confront mediators during mediations – from the beginning of the day to the final caucus. The objective is to provide each participant with some useful and usable tips which will be available to them in their next mediations. This session is one-hour of ethics credit and one-half hour of general credit.

# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday)

#### **DOMESTIC VIOLENCE AWARENESS FOR MEDIATORS**

Haley Cutler, *Manager of Professional and Community Education,  
Women In Distress of Broward County, Inc., Ft. Lauderdale, Florida*

The presence or history of domestic violence may compromise the integrity of the mediation process. This workshop will build the capacity of mediators to understand the dynamics of domestic violence, recognize the indicators that a party may be experiencing domestic violence and understand the appropriate interventions. Additionally, mediators will leave this training with tools for domestic violence screenings, safety planning and referrals for use when appropriate. Recommended for: All mediators.

**2:45 – 4:00 PM      SESSION FOUR, SELECT FROM THE FOLLOWING:**

#### **BREAKING IMPASSE AND THE MARTIAL ARTS: ADVANCING AS A KICK #&% MEDIATOR**

John W. Salmons, Attorney and Circuit Civil, Family and Federal Mediator, Ft. Lauderdale, FL  
Repeat of 9:00 a.m. program, see above.

#### **MEDIATOR ETHICS REGARDING THE CASTAWAYS: HUMAN INTERACTIONS, THEIR PERILS, AND MEDIATION**

Michael Orfinger, Attorney and Circuit Civil Mediator, Daytona Beach, FL

#### **WHAT DO I DO WHEN .....?**

Ross W. Stoddard, III, Attorney-Mediator (civil & probate), Irving (Las Colinas), TX

#### **WHAT DO I DO WHEN .....?**

Ross W. Stoddard, III, Attorney-Mediator (civil & probate), Irving (Las Colinas), TX



# NAWCJ Judicial College 2010

## Section Three

### Breakout Programs, Day Three (Wednesday)

#### 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*

#### **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**

# NAWCJ Judicial College 2010

## Section Three

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

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

**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.

**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)**

# NAWCJ Judicial College 2010

## Section Three

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

#### Wednesday Breakout Option Two, Continued:

#### **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**

#### **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.

# NAWCJ Judicial College 2010

## Section Three

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

#### 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.

#### **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**

# NAWCJ Judicial College 2010

## Section Three

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

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

#### **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)**

#### **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**

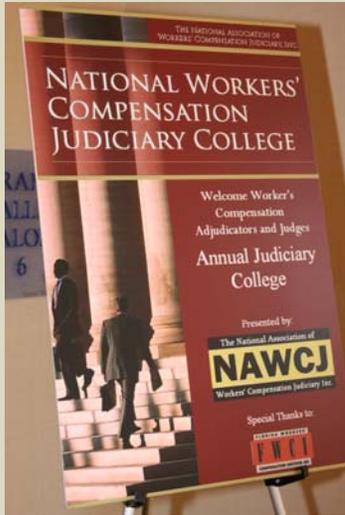
#### **2:30 - 3:00 PM CLOSING GENERAL SESSION: CONCLUDING REMARKS AND SUGGESTIONS FROM THE REGULATORS/DOOR PRIZES/RELEASE OF 2010 MULTI-STATE STATUTE BOOK**



# NAWCJ Judicial College 2010

## Section Three

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



## 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 \$164. Cut-off July 30, 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 \_\_\_\_\_ CVV \_\_\_\_\_ Signature \_\_\_\_\_

Make Checks Payable To: The National Association of Workers' Compensation Judiciary, Inc.

FEIN # 26-4598530

Online Registration Is Available on June 15, 2010 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.

To Attend the Mediation Program, You Must Complete this Form, and only this Registration Form. Attendance at the entire FWCI program is included in your Mediation Program Registration.

If You have Already Registered for the NAWCJ Program, You Must Still Complete and Return this Form so We can Reserve Enough Lunch.

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

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

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

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

Check here if you have already registered and this is only submitted so that you will be counted for lunch on Wednesday \_\_\_\_\_

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.

Registration Fee: \$225.00

Method of Payment:  Check  Mastercard  VISA  American Express  Discover

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

Make Checks Payable To: Florida Workers' Compensation Institute; FEIN # 26-4598530

Online Registration Is Available on May 15, 2009 at [www.fwciweb.org](http://www.fwciweb.org) (Click on "conference").

Registration: To register, mail the completed registration form, along with credit card information (VISA/MC/ AmX/Discover) or a check made payable to: Florida Workers' Compensation Institute, P.O. Box 200, Tallahassee, Florida 32302-0200; fax form to (850)521-0222; or register online at [www.fwciweb.org](http://www.fwciweb.org). Registration for the Mediation Program will include conference handout materials, access to the exhibit area, Monday night reception, and participation in all educational opportunities of the Annual Workers' Compensation Educational Conference. For more information, contact the Florida Workers' Compensation Institute at (850) 425-8156 or 425-8155.

# 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)