# Lex and Verum

## The National Association of Workers' Compensation Judiciary

Number XXI, May 2011


# Ethics of Social Networking

By Hon. Ellen Lorenzen, President, NAWCJ

In April I attended the 2011 Workers' Compensation Midwinter Seminar and Conference put on by the TIPS section of the Labor and Employment Law committee of the ABA. Three of our members--myself, Judge Lazzara and Judge Torrey--and another Judge, Todd Selig, were on a panel that was devoted to exploring common ethical issues shared by Judges and practitioners. One of our topics for the panel was if and how judges could participate in social networking sites, such as Facebook. In our planning sessions our panel had no contact with any of the other panels and so, unbeknownst to us, a panel of attorneys was presenting trends in litigation and also chose to discuss the use of social networking in the discovery process.

The attorney panel presented at 9:00 a.m. on Saturday, the last day of a three day meeting, a beautiful spring day with a ballgame at 1:00 that afternoon. During the panel's presentation there was a certain amount of discussion regarding obtaining admissible evidence from a Facebook page. Our panel was the last one for the conference, starting at 11:30 a.m. I expected an attendance of about 3 people. Much to my surprise, we had a full house. More to the point, the audience seized on the issue of social networking in the context of what were the ethical, procedural and evidentiary ramifications of asking a judge to consider postings on a claimant's or witness' social networking page. Based on the discussion I offer you four thoughts.

1) I expect the issue of Facebook evidence to come up in final hearings before us in the near future. There is very little case law, statute or rule guidance on the topics of admissibility and authentication.
2) Be aware that adjusters and attorneys are personally going to Facebook pages for the parties and witnesses and reading what is posted for all to see. Further, they are asking to be accepted as "Friends" in an effort to read what is posted for only some to see. And they are going to ask you to read what they print off from the site, whether they only obtained a posting available to just anyone or a posting available only to a friend without knowing how to authenticate that posting.
3) Read two opinions regarding whether judges may have Facebook pages or be a friend on someone else's Facebook page, not for the ethics opinions expressed but to see how each treats defining the word, "Friend." The first opinion is JE-119 from the Ethics Committee of the Kentucky Judiciary, 2010, which suggests that "Friend," in the context of social networking is a term of art. Then compare that decision to Opinion 2009-20 from the Judical Ethics Committee of the Florida Supreme Court, which decided that the word, "Friend," in social networking had exactly the same meaning that the word, "friend," had when we were in elementary school. I strongly suggest that how we rule on what is admissible and in what context Facebook postings may be used will turn on how we define the word, "Friend," and I think that these two divergent opinions reflect what will become the majority and minority view of that definition. I also suggest that, when it is a matter of law, what we as Judges will admit into evidence and use as a basis for determining credibility, will be strongly tied to whether we believe that a "Friend" is a term of art such that inappropriate or damaging remarks made are admissible or whether we believe a "friend" is someone we can let our hair down with and not be afraid of inadvertently harming our own interests.
4) Consider asking Facebook to change the word, "Friend," to Contact (if Microsoft grants permission). It would simplify our judicial lives immensely.

Feel free to share your thoughts with me at Ellen Lorenzen@DOAH.state.fl.us.

# Why the Triangle Fire Matters Still

By David Von Drehle*

The spirit of the early 20th century was, simply put, the spirit of Progress. New Yorkers who, as children, read by the light of whale oil lamps and crossed the East River by wooden ferryboat now crossed over bridges aglow with electric lights, as if riveted with diamonds. A generation earlier, the tallest structure in the city was a church steeple; now new skyscrapers were topping out at the rate of one every five days. Humans could fly and pictures could move.

Among the countless lasting inventions was the modern newspaper, dreamed up by publishers with names like William Randolph Hearst and Adolph Ochs and — the most influential of them all — Joseph Pulitzer. The New York World, Pulitzer's great newspaper, expanded from the news-and-opinion format of the 19th century to introduce feature sections, a magazine, comic strips, and lots of photographs. Pulitzer was the first publisher to sell a bulky Sunday paper, which in turn led him to elevate college football from Ivy League brawling into an enduring cultural sensation. He needed something popular to lead the Sunday news pages.

But the World didn't need to create a story for Sunday, March 26, 1911. On Saturday afternoon, the 25th, the World's star reporter and future editor, Herbert Bayard Swope, charged into a hotel suite where New York District Attorney Charles Whitman was holding an informal press conference. "That will be enough, boys!" Swope declared. "The Triangle building's on fire and I think the D.A. should be there."

News of the deadly blaze at the Triangle Waist Company dominated every front page in the city the next morning. The story was so gruesome it required no sensationalism. At closing time in the city's largest blouse factory, a spark or cigarette butt set fire to a bin of fabric scraps and tissue paper. Within minutes, the flames had trapped nearly 150 workers, mostly women and girls, on the ninth floor of a 10-story building just east of Washington Square. A huge crowd of witnesses rushed from the square and nearby streets, arriving in time to watch helplessly as victims leapt from the windows to escape the flames.

By the time Swope and the D.A. reached the street corner, 146 people were dead.

In the days that followed, the major papers continued to run huge headlines over stories examining the fire — what caused it, and who was to blame. The World demanded a vigorous set of new safety laws. Hearst's New York American pointed an accusatory finger at the city building commissioner. Other newspapers called for the prosecution of the Triangle factory owners, Max Blanck and Isaac Harris. "BLAME SHIFTED ON ALL SIDES FOR FIRE HORROR," the Times headlined.

But the passion for change burned out almost as quickly as the fire itself. Readers in New York had their pick of some two dozen daily newspapers; thus, the competition to find a new story trumped all other concerns. Within a few weeks after the catastrophe, a headline deep inside the World declared: "Public Officials Already Losing Interest in Proposed Reforms."

Why, then, did the Triangle fire lead, ultimately, to the most sweeping workplace safety reforms America had ever seen? A significant part of the answer lies in the journalism translated in today's commemorative issue of the Forward. Abraham Cahan was a Jewish immigrant from Lithuania whose creativity and influence were, in their way, a match for Pulitzer's or Hearst's, although his fame and fortune never approached theirs. In 1897, Cahan founded the Yiddish-language Forverts to serve the rapidly growing community of Eastern European Jews on the Lower East Side. Patriotic, pro-union, and passionately socialist, the Forverts (or Forward in English) became, in many ways, the soul of that community. Roughly a third of the immigrant Jews in New York worked in the garment shops in those days, and the Forverts rallied them to organize — even as it tutored them on their transition into American society. "It is as important to teach the reader to carry a handkerchief in his pocket as it is to teach him to carry a union card," Cahan once explained.

With remarkable speed, the new immigrants built a self-sufficient society around pillars like the Forverts, the Workmen's Circle, the United Hebrew Trades and the Educational Alliance. Through the twin engines of organization and assimilation — the guiding principles of Cahan's newspaper — they became a significant political force in New York City.

*Continued, Page 3.*

*Triangle Fire, from P.2*

Their rise did not escape the attention of New York's corrupt Democratic political machine, Tammany Hall. Tammany's power was its loyal base among the Irish and German immigrants of the previous generation. But by the early 1900s, many of those earlier arrivals were moving out of the crowded Manhattan tenements — and the new immigrants were taking their places. The Lower East Side became "a wonderful field for the Socialistic propaganda," the New York Times explained at the time, "and socialism has a great army of devotees here." In 1905 and 1909, they threw their support to publisher Hearst in his campaigns to wrest control of the city from Tammany Hall.

This solidarity, with the Forverts as a catalyst, was a force that Tammany Boss Charles F. Murphy could not ignore. And when hundreds of thousands of New Yorkers lined the streets in a driving rainstorm to honor a funeral procession for the Triangle victims — one of the largest crowds ever gathered in the city — Tammany Hall realized that the needs of the workers could speak to America as a whole.

For the first time in its long history, Tammany Hall embraced genuine reform. Murphy ordered the Tammany controlled state legislature to create a powerful Factory Investigating Commission, led by two young Tammany lawmakers, Robert F. Wagner and Alfred E. Smith. The commission pushed through the most sweeping agenda of pro-labor and pro-safety laws in the country, and this made Tammany more popular and more powerful than ever before. Tammany's Al Smith rode the reform wave to the New York governor's mansion, where he served four highly effective terms. He never forgot the Triangle's dead.

Robert Wagner, meanwhile, entered the U.S. Senate, where memories of the Triangle fire burned bright in his mind as he wrote much of the legislation known as the New Deal.

By translating the Forverts coverage of the Triangle fire into English, the staff of today's Forward has shone a new light on the role of a brilliant community newspaper in reshaping the politics of a nation. The Forverts never lost its passion for the people it served. It called them to stand up, join together and take their rightful place in their new American home. A century after the tragedy at the Triangle Waist Company, in these important translations, we once again hear that call.

**David Von Drehle, an editor-at-large for Time magazine, is author of "Triangle: The Fire That Changed America."*



# Our Ghastly Devastation

***Originally published in the Forverts, March 26, 1911.***

The heart grieves, breath is held, eyes cry bloody tears. The disaster is too great, too dreadful, to be able to express one's feelings.

A mountain of people, of children burned to death!

Young children, blood and milk, full of life's force, lying in a pile of a human burnt-offering!

Children wept over by parents, children—their crowning glory—their pride—their hope—the comfort of mothers and fathers, were in one minute taken from this world, drawing their last breath in a sea of flames.

In dark tenement rooms fathers, mothers, brothers, sisters, grooms, brides, loved ones with eyes bugging out of their heads from searching, waiting for their children, sisters, brothers, loved ones; waiting for them to arrive from the shop, where they labored all week long, waiting for them to arrive bringing their paltry wages and resting from the week's toil; but instead of them, the blackest news is delivered: they are no longer among the living, their bodies lie seared, a burnt-offering on the altar of capital!

Like birds, so many of these young children took off skyward, in twosomes and threesomes they held each other, and leaped away from the flame-filled hell. And that's how we perceive them yet. In flight they were still alive but one second later and their young bodies smash on the street's concrete surface and they are no longer! Their young lives are extinguished!

In the last minute of their work-week the calamity occurred. Thousands of their toiling brothers and sisters employed in union shops, had already streamed homeward. They who labored in a non-union shop, were still in their fire-trap, and their week's work ended along with their young lives…

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***Scholarship Opportunities Available to Help Defray Cost, See Page 15!***

Adjudicators, this is an unparalleled value in continuing education. Our association with the Florida Workers' Compensation Institute and the assistance of our Associate Members allows us to provide this opportunity at a fraction of what you will pay elsewhere, and this program is tailored to, and only attended by, workers' compensation adjudicators just like you. If you can attend only one conference in 2011, make it this one. Eleven hours of adjudicator-specific continuing education, plus an additional Wednesday program choice of nine hours of continuing mediator training, advanced Medicare education, or multi-state programming. Each of these Wednesday programs brings distinguished experts, and your choice is included in the NAWCJ registration fee. Your registration fee therefore affords you up to **20 hours of continuing education** at an effective rate as low as $10.00 per hour, and much more. Come see it for yourself.

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### Multistate Comparative Law Panel

Our distinguished panel of Judges from Florida, Texas, Pennsylvania, and Maryland will describe and discuss similarities and differences among the states' workers' compensation laws and procedures. This highly interactive program will provide insight, perspective and analysis of the variety found in workers' compensation systems around the country. Attendees will come away from this with perspective and ideas.

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Michael T. Reilly, M.D., Ft. Lauderdale, FL, and Tim Joganich, Penns Park, PA, will discuss the questions of causality inherent in the orthopedic surgeon's diagnoses. This is a study in the biomechanical forces necessary to produce injuries to the spine and joints. Understand how the medical findings relate to the medical opinions.

#### The Aging Workforce

Jesse A. Lipnick, M.D., Gainesville, FL, will explore the implications of older workers remaining in the workforce and the body's ability to heal changes with age. The likelihood of co-morbidities is also an issue with older workers' injuries. Dr. Lipnick uses his medical experience and work with aging patients to foster understanding of the unique challenges that are presented by this demographic.

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*Our Ghastly Devastation, from P.3*

The heart is too aggrieved, the breath seized by the sight of the pile of fresh human burnt-offering, inconceivable. A mere one day prior judges invalidated a law supporting the safety of workers on dangerous jobs. And the following day, what we wrote about that, before the black catastrophe occurred, seems to have been a precise prophecy of the dark misfortune:

The court of appeals, the state's highest court, presented a frank, daring statement earning her a heartfelt compliment.

She revoked the first truly good labor law that the state's legislature had accepted. And declared that the law, by which in certain dangerous trades, injured workers must receive damages from their bosses even when the bosses, for instance, aren't responsible for the accident, the law is against New York State's and the US's constitution.

The court wasn't satisfied with merely rescinding the law which in itself wouldn't have been such a heroic gesture. In this country labor laws are being abandoned in dozens of courts. Our judges are gaining acclaim the world over for this. This time, however, the court of appeals sent clear messages that will penetrate deep within the hearts and minds of workers in this land.

Here is the content of this statement: The judges state that from an economical, philosophical and moral standpoint the law is necessary and correct. They state further that if a trade is dangerous then for the entire time he labors for a boss, a worker is exposed to the possibility of an accident. Why should it be worse for the worker than for a simple machine? When a machine breaks the boss fixes it with his own money. The worker is a live machine. Why should the boss not be responsible for him exactly as for an extinguished machine?

The judges also declared that such a law must be upheld, as rescinding it would be to stand in opposition to progress. But…but…but aside from all that, they say the law must be abandoned, as this country has a written constitution and this written constitution states that private ownership is holier that all else in existence, and this law counters the interests of private ownership.

Also, it signifies down with morality, down with progress, down with science, down with all that elevates man above animal! Only one thing is holier and more precious—private ownership, the sack of gold, capitalism!

This is said openly. It's well known that the judges are candid people. That's what they believe and they have the courage to say it.

To sum up, capitalists have won for the thousandth time and the workers have, for the thousandth time, lost. One year ago, when the law was being reviewed by a commission, the socialists disclosed that the courts will rescind it. The conservative trade-unions laughed at us. They stated that we were great 'pessimists' or that we desired to instigate trouble and fighting between capital and labor, for no reason.

What would these trade-unions say now? What effect would the decision, the judges' statement, have on them now?

Let's hope it would make them also a bit 'pessimistic' and a bit more revolutionary than they are. Let's hope that this recent shock will sober them up and help them see once and for all that so long as sitting in the legislatures and courts are the leaders of capital, no labor law will be allowed to pass.

The capitalist court of appeals had to act capitalistically. She had to state that capitalism stands above all else in existence. The court judges, prior to being nominated to their positions, had to impress upon the capitalists that they believe in the 'ultimate sacredness' of capital.

If workers want to have labor laws they must act precisely as capitalists do in these times. They must vote for judges, those who have proven to uphold workers' lives to be more valuable and more blessed than capital.

# National Academy of Social Insurance issues 2010 Report "Workers' Compensation: Benefits, Coverage, and Costs, 2008

**Overview of Workers' Compensation**

Workers' compensation provides benefits to workers who are injured on the job or who contract a work related illness. Benefits include medical treatment for work-related conditions and cash payments that partially replace lost wages. Temporary total disability benefits are paid while the worker recuperates away from work. If the condition has lasting consequences after the worker's healing period, permanent disability benefits may be paid. In case of a fatality, the worker's dependents receive survivor benefits. Workers' compensation benefits are not subject to federal or state income taxes.

Germany enacted the first modern workers' compensation laws, known as Sickness and Accident Laws, in 1884, following their introduction by Chancellor Otto von Bismarck (Clayton, 2004). The next such laws were adopted in England in 1897. Workers' compensation was the first form of social insurance in the United States. The first workers' compensation law in the United States was enacted in 1908 to cover certain federal civilian workers. The first state laws were passed in 1911. The adoption of state workers' compensation programs has been called a significant event in the nation's economic, legal, and political history. The adoption of these laws in each state required great efforts by business and labor to reach agreements on the specifics of the benefits to be provided and on which industries and employers would have to provide these benefits. Today, each of the fifty states, the District of Columbia, and US territories has its own program. A separate program covers federal civilian employees. Other federal programs provide benefits to coal miners with black lung disease, Longshore and Harbor workers, employees of overseas contractors with the U.S. government, certain energy employees exposed to hazardous material, workers engaged in the manufacturing of atomic bombs, and veterans injured while on active duty in the armed forces.

Before workers' compensation laws were enacted, an injured worker's only legal remedy for a work-related injury was to bring a tort suit against the employer and prove that the employer's negligence caused the injury. At the time, employers could use three common- law defenses to avoid compensating the worker: assumption of risk (showing, for example, that the injury resulted from an ordinary hazard of employment[3]); the fellow worker rule (showing that the injury was due to a fellow-worker's negligence); and contributory negligence (showing that, regardless of any fault of the employer, the worker's own negligence contributed to the accident).

Under the tort system, workers often did not recover damages and experienced delays or high costs when they did. While employers generally prevailed in court, they nonetheless were at risk for substantial and unpredictable losses if the workers' suits were successful. Litigation created friction between employers and workers. Initial reforms took the form of employer liability acts, which eliminated some of the common-law defenses. Nonetheless, employees still had to prove negligence, which remained a significant obstacle to recovery (Burton and Mitchell, 2003).[4] Ultimately, both employers and employees favored workers' compensation legislation to ensure that a worker who sustained an occupational injury or disease arising out of and in the course of employment would receive predictable compensation without delay, regardless of who was at fault. As a quid pro quo, the employer's liability was limited. Under the exclusive remedy concept, the worker accepts workers' compensation as payment in full and gives up the right to sue. (There are limited exceptions to the exclusive remedy concept in some states, such as when there is an intentional injury of the employee.)

Workers' compensation programs vary across states in terms of who is allowed to provide insurance, which injuries or illnesses are compensable, and the level of benefits. Workers' compensation is financed almost exclusively by employers, although economists argue that workers pay for a substantial portion of the costs of the program in the form of lower wages (Leigh et al., 2000). Workers' compensation coverage is mandatory in all states but Texas. Generally, state laws require employers who wish to self-insure for workers' compensation to obtain approval from the state regulatory authority after demonstrating financial ability to carry their own risk (self-insure). For those employers who purchase insurance, the premiums are based in part on their industry classifications and the occupational classifications of their workers.

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## Ask an obvious question, get an obvious answer . . . .

Q. Okay. You had to go to the roundhouse to get coffee?
A. That's who was perking it.
Q. Where did they brew the coffee in the roundhouse?
A. In the coffee pot.

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*National Academy of Social Insurance, from P.6*

Many employers are also experience-rated, which results in higher (or lower) premiums for employers whose past experience – as evaluated by actuarial formulas that consider injury frequency and aggregate benefit payments – is worse (or better) than the experience of similar employers in the same insurance classification. The employers' costs of workers' compensation can also be affected by other factors, such as deviations, schedule rating, and dividends (Thomason, Schmidle, and Burton, 2001). These competitive pricing adjustments vary over the course of the insurance underwriting cycle.

### Covered Employment and Wages

In 2008, workers' compensation covered an estimated 130.6 million workers, a decrease of 0.8 percent from the 131.7 million workers covered in 2007 (Table 2). Total wages of covered workers were $5.9 trillion in 2008, an increase of 1.7 percent from 2007. This increase was the combined effect of 0.8 percent decrease in covered workers – due to recession which began in December 2007 – and a 2.5 percent increase in the workers' average wages. Workers' compensation coverage rules did not change significantly during this period.

### Coverage Rules

Every state except Texas requires almost all private employers to provide workers' compensation coverage (IAIABC-WCRI, 2009). In Texas, coverage is voluntary, but employers not providing coverage are not protected from tort suits. An employee not covered by workers' compensation insurance or an approved self-insurance plan is allowed to file suit claiming the employer is liable for his or her work-related injury or illness in every state. Other states exempt employers from mandatory coverage of certain of categories of workers, such as those in very small firms, certain agricultural workers, household workers, employees of charitable or religious organizations, or employees of some units of state and local government.

Employers with fewer than three workers are exempt from mandatory workers' compensation coverage in Arkansas, Georgia, Michigan, New Mexico, North Carolina, Virginia, West Virginia, and Wisconsin. Employers with fewer than four workers are exempt in Florida and South Carolina. Those with fewer than five employees are exempt in Alabama, Mississippi, Missouri, and Tennessee. The rules for agricultural workers vary among states. In all except fourteen states, farm employers are exempt from mandatory workers' compensation coverage altogether. In other states, coverage is compulsory for some or all farm employers.

### Method for Estimating Coverage

Because no national system exists for counting workers covered by workers' compensation, the number of covered workers and their covered wages must be estimated. The Academy's methods for estimating coverage are described in Appendix A.

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*National Academy of Social Insurance, from P.7*

In brief, we start with the number of workers and total wages in each state that are covered by unemployment insurance (UI). Almost all of U.S. wage and salary workers are covered by UI (NASI, 2002). We subtract from UI coverage the estimates of the workers and wages that are not required to be covered by workers' compensation because of exemptions for small firms and farm employers and because coverage for employers in Texas is voluntary. Using these methods we estimate that in 2008, 96.9 percent of all UI–covered workers and wages were covered by workers' compensation.[5] Self-employed persons are not covered by unemployment insurance or usually by workers' compensation.

NASI's coverage estimates seek to count the number of workers who are legally required to be covered under the state laws. The methodology may undercount the number of persons who are actually covered. For example, in some states, self-employed persons may voluntarily elect to be covered and in those states with numerical exemptions, some small firms may voluntarily purchase workers' compensation insurance. The NASI methodology may also over estimate the number of workers actually covered by workers' compensation. Several recent studies have found that actual coverage is less than legally required coverage because of evasive strategies used by employers, such as not reporting employees or misclassifying them as independent contractors (Greenhouse, 2008; FPI, 2007). As a practical matter, NASI lacks the information needed to systematically estimate compliance or non-compliance with state laws.

## Changes in State Coverage

Because the primary workers' compensation coverage rules did not change between 2007 and 2008, differences in growth rates among states generally reflect changes in the states' overall employment and wages. In Texas, where workers' compensation is voluntary for employers, coverage decreased from 76 percent of workers in 2007 to 75 percent in 2008 according to surveys of Texas employers. About 30 states recorded a fall in employment in 2008. With regard to wages covered under workers' compensation, all jurisdictions registered increases in 2008 over 2007 except Arizona, Florida, Georgia, Idaho, Michigan and Nevada (Table 3).

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[3] A more complete definition is provided by Willborn et. al (2007:851); "The assumption of risk doctrine barred recovery for the ordinary risks of employment; the extraordinary risks of employment, if the worker knew of them or might reasonably have been expected to know of them; and the risks arising from the carelessness, ignorance, or incompetency of fellow servants."

[4] As a result, the employers' liability approach was abandoned in all jurisdictions and industries except the railroads, where it still exists.

[5] According to unpublished estimates provided by the Bureau of Labor Statistics, only 3 percent of all employees who worked for employers who participated in the BLS National Compensation Survey (NCS) were employed in establishments that reported zero workers' compensation costs. The 3% figure was for all employees covered by the survey, as well as for employees in the private sector and employees in the state and local government sector. The NASI estimate of legally required coverage has a national average (96.9 percent of all UI covered workers in 2008) that is virtually identical to the workers' compensation coverage shown by the NCS.

The foregoing is excerpted from the REPORT: Workers' Compensation: Benefits, Coverage, and Costs, 2008, Published September 2010 by the National Academy of Social Insurance ("NASI"). Their website, http://www.nasi.org/ is a wealth of information.

# Upcoming Conferences:

SEAK 31st Annual National Workers' Compensation & Occupational Medicine Conference, July 19-21, 2011, Hyannis, MA, $975.00, http://www.seak.com//App_Themes/seak/July2011%20reg%20page%20only.pdf

63rd Annual SAWCA Convention, Beau Rivage, Biloxi, Mississippi July 25-29, 2011, $650.00, http://store.sawca.com/

The Fourteenth Annual Tennessee Workers' Compensation Educational Conference**,** ne 14-15, 2011 ,$325.00 http://www.tennessee.gov/labor-wfd/wc_conf_register2011.pdf

These programs are not sponsored or endorsed by the NAWCJ, but are noted here for information.

# Workers' Comp Resources

National Association of Workers' Compensation Judiciary
www.NAWJC.org

Florida Workers' Compensation Institute
www.fwciweb.org

# New MSP Reform Bill Proposed in Congress

## The *SMART Act (H.R. 1063)* Proposes New Amendments to the Medicare Secondary Payer Statute

By: Mark Popolizio, Esquire

On March 14, 2011, the *Strengthening Medicare and Repaying Taxpayers Act of 2011 (SMART Act) (H.R. 1063)* was introduced in the U.S. House of Representatives by Tim Murphy (R-PA) and Ronald Kind (DWI). This legislation proposes major amendments to the Medicare Secondary Payer Statute (MSP).[1] The SMART Act modifies and replaces the reform proposals contained in the Medicare Secondary Payer Enhancement Act (H.R. 4796) which was introduced last year in Congress. H.R. 4796 generated considerable bipartisan interest having secured 35 cosponsors prior to the close of the 111th Congress in December 2010.

The SMART Act targets specific components of MSP compliance relating to Section 111 of the Medicare, Medicaid and SCHIP Extension Act, Medicare conditional payments and other important aspects of the MSP.

### Proposal #1

The SMART Act would allow the parties to obtain a "statement of reimbursement amount" from the Centers for Medicare and Medicaid Services (CMS) enabling them to determine the exact reimbursable conditional payment amount *prior* to a settlement, judgment, award or other payment.

This proposal takes aim at a major and recurring problem facing the claims industry – the inability to determine the conditional payment amount that needs to be repaid *prior* to settling a claim. To appreciate the significance of this proposal, a brief review of conditional payments and CMS' process relating thereto is in order.

#### Medicare Conditional Payments - Brief Overview

Medicare conditional payments can be defined as payments made by Medicare for accident related medical treatment for which another payer is responsible as determined and defined under the MSP.[2] There are several manners in which conditional payments can arise in the claims context. The most typical way for conditional payments to arise relates to cases where the primary payer *denies* the claim and does not pay for medical services. Conversely, a primary payer may accept responsibility to provide accident related medical treatment (such as a compensable workers' compensation claim or non-fault claim), but the medical provider mistakenly submits the bills to Medicare for payment instead of to the primary payer. In these instances, if the claimant is a Medicare beneficiary, Medicare very typically steps in and pays for the claimant's accident related treatment with said payments "conditioned upon reimbursement" to Medicare.[3]

Medicare has a statutory right for conditional payment reimbursement under the MSP.[4] CMS has wide latitude in terms of the parties it may pursue for conditional payment reimbursement, and how it may do so. CMS has a direct action against *"any and all entities that are or were required or responsible to make payment"*[5] and any entity that "*receives"* a primary payment, including a beneficiary, provider, supplier, physician, attorney, state agency, or private insurer.[6] CMS may seek double damages against primary payers in certain situations.[7] Medicare also has a subrogation right, as well as rights of joinder and intervention.[8]

#### The Problem - Obtaining CMS' Reimbursable Conditional Payment Amount

Obtaining conditional payment information can be a time consuming and cumbersome process involving multiple steps and various CMS recovery contractors. In general, this process is initiated by notifying the Coordination of Benefits Contractor (COBC) and providing this contractor with certain identifying information related to the claimant and claim. Reporting to COBC is made via phone, mail or fax.[9] Once COBC is placed on notice, it in turn notifies another contractor, the Medicare Secondary Payer Recovery Contractor (MSPRC). The MSPRC then issues a *Rights and Responsibilities Letter* to the parties advising of Medicare's reimbursement rights.

*Continued, Page 11.*

In Keeping with the NAWCJ mission to facilitate and encourage education, collegiality and interaction for those who adjudicate workers' compensation disputes, the National Association of Workers' Compensation Judiciary is pleased to provide the following information on upcoming meetings of the Southern Association of Workers' Compensation Administrators (SAWCA). You can learn more about SAWCA by visiting their website, *www.sawca.com*

# *The Southern Association of Workers' Compensation Administrators*

The Southern Association of Workers' Compensation Administrators, Inc. (SAWCA) is a cooperative effort of nineteen jurisdictions. The Mission of SAWCA is to make available and present instruction by means of forums, lectures, meetings, and written material regarding the administration of workmen's laws and to provide an avenue by which those interested in workers' compensation may interact with one another to share information and address issues common to the jurisdictions that are members of the association.

## *63rd Annual SAWCA Convention*

### *July 25 – 29, 2011 Biloxi, Mississippi*

Conference Outline:
Monday: Executive Committee Meeting /Ex. Com. Reception & Dinner, Sponsored By NCCI
Tuesday: Regulator's Roundtable & President's Reception
Wednesday: General Sessions / Lunch / & Committee Meetings
Thursday: General Sessions, Committee Mtgs Network Reception & Dinner
Friday – "Farewell Friday" / General Session & Committee Reports

## *SAWCA National Regulators "Roundtable"*

*August, 23, 2011 at the Workers' Compensation Educational Conference, Orlando, FL*

This new addition to the conference is sponsored by SAWCA and intended to bring together regulators from throughout the country to discuss challenges, concerns, and issues facing individual jurisdictions in the oversight of the ever changing workers' compensation industry. Problems faced by one jurisdiction may have already been successfully addressed by another; a developing issue or concern in one state may be an omen for future development in your state; and legislative initiatives know no boundaries. The National Regulators Roundtable is a forum designed to permit regulators to share lessons learned and seek timely answers to their most pressing issues. Karl Aumann, President of SAWCA and Chairman of the Maryland Workers' Compensation Commission will moderate the roundtable which will include the following panelists:

Michael W. Alvey / Chairman of the Kentucky Workers' Compensation Board
Richard Thompson / Chairman of the Georgia State Board of Workers' Compensation
David Langham / Florida Deputy Chief Judge of Compensation Claims
Preston Williams / Director of Self-Insurance for Mississippi WCC
Larry White / Deputy Dir. Louisiana Workforce Commission Office of Workers' Compensation
Deneise Lott / Mississippi Administrative Law Judge
Melodie Belcher / Georgia State Board of WC / Division Director & Administrative Law Judge
Michele J. McDonald / Maryland Assistant Attorney General

*New MSP Reform Bill, from P.9*

The MSPRC states that within 65 days of the date of the *Rights and Responsibilities Letter* a *Conditional Payment Letter (CPL)* will be issued. The CPL is a significant document as it provides the parties with an *initial* listing of CMS' alleged conditional payment amount related to the claim. Typical information contained in a CPL includes, but is not limited to, provider information, diagnosis/ICD codes, service dates, total charges, claimed conditional payment amount. Since conditional payments can continue to accrue as the case progresses, it is often necessary to request updated conditional payment information at subsequent points during the claim in order to properly assess potential exposure.[10]

Under CMS' current process, the parties generally cannot obtain the exact reimbursable conditional payment amount until *after* the claim settles and the executed settlement agreement is sent to CMS' contractor, the Medicare Secondary Payer Recovery Contractor (MSPRC).

At that point, the MSRPC will issue CMS' "final demand" reflecting the conditional payment amount that needs to be repaid. CMS typically demands full reimbursement of the claimed amount within 60 days. If this amount is not paid within 60 days, interest is then assessed on the underlying amount. If the claimed amount is not paid within 120 days, the matter could be referred to the United States Department of Treasury for further collection action.

The inability to determine the reimbursable conditional payment amount prior to settlement often causes a host of practical problems. In this regard, under the current process the parties are essentially forced to settle the claim upon only an interim *estimate* of CMS' conditional payment amount. Since additional conditional payments could have accrued since the last CPL was received by the parties, there is potential "bounce" in the conditional payment amount. This potential increase could occur because additional medical treatment may have been rendered *after* the date the last CPL was obtained. Furthermore, this could occur since medical providers are allowed up to 12 months from the date of service[11] to submit their bills to Medicare for payment and, as such, there could very well have been additional conditional payment amounts that had not yet hit Medicare's system at the time CMS' interim estimates were obtained.

Accounting for these contingencies raise additional practical challenges. For instance, issues are raised in terms of how best to ensure the availability of funds to pay off any additional conditional payment amounts contained in CMS' "final demand," especially in light of the fact that CMS has the right under the MSP to pursue *any* of the parties to the settlement. Compounding the problem further is the fact that it can take several months for the parties to receive the actual "final" conditional payment amount from the MSPRC.[12]

*Continued, P. 12*

# workcompcentral Headlines Suggest Legislative Season

California is considering mandate for update in medical billing codes. Senate Bill ("SB")127.

California is considering implementation of resource-based relative value system (RVRBS) in fee schedule. SB 923.

Florida is considering restrictions on physician dispensing of medication. House Bill ("HB") 7095.

Kansas Governor signs House Bill 2134 in April. Bill reforms multiple aspects of Kansas workers' compensation, including pre-existing conditions definition of "prevailing factor" of causation, and altering caps on disability payments.

Maine is considering restrictions on opiod prescriptions for non-cancer pain. Legislative Document 1501.

Nevada is considering allowing labor unions to represent injured workers in proceedings.

North Carolina is considering tort reform, which may cap workers' compensation temporary indemnity and medical benefits. HB 709.

Pennsylvania is considering designation of cancer as an occupational disease for firefighters. HB 797.

Tennessee is considering altering their definition of injury and establishing a presumption that treating physicians are correct on causation. HB 1503.

Texas is considering expansion of physician dispensing of medication. SB 546.

Texas is considering added requirements for information sharing by employee leasing companies. HB 625.

Texas House approves continuation of the Office of Injured Workers' Counsel. HB 1774.

Utah has passed a law focused on misclassification of employees. SB 35.

Vermont is working on a "single-payer health system. HB 202.

Washington is considering subsidizing wages for workers returned to light duty and allow compromise settlement agreements. Senate Bill 5566.

A Federal initiative was announced April 19, 2011 to support expansion of prescription drug monitoring programs "PDMP" administered by states.

*New MSP Reform Bill, from P.11*

## How Would the SMART Act Change the Current Process?

The SMART Act would allow the parties to obtain the exact reimbursable conditional payment amount payable to Medicare *prior* to a settlement, judgment, award, or other payment. The SMART Act proposes the following process:

**Parties Can Request a "Statement of Reimbursement Amount" –**

The parties would be able to request a "statement of reimbursement amount" from CMS at any time starting 120 days prior to the reasonably expected date of a settlement, judgment, award, or other payment.

**CMS Would Then Have Specific Timelines to Respond**

Within 65 days of receipt of this request, CMS would be required to issue the statement of reimbursement amount. If CMS provides this statement within the 65 day period, this *"shall constitute the conditional payment subject to recovery."*[14]

If Medicare *failed* to provide this statement within the 65 day time frame, it would be given an opportunity to "cure" its failure to respond after receiving an additional notice from the parties. CMS would then be required to issue the statement *"within 30 days of the date of such additional notice."*[15]

If Medicare still failed to provide the statement within the 30 day "cure" period, its conditional payment claim would essentially be waived unless it could demonstrate "exceptional circumstances" which is to be defined per the proposed act *"in a manner so that not more than 1 percent of the repay ment obligations under this subclause would qualify as exceptional circumstances."*[16]

If, on the other hand, the expected settlement, judgment, award or other payment does *not* occur, or is no longer expected to occur, within 120 days of the date of the original date of the request for the statement of reimbursement, CMS would need to be notified. In this instance, CMS would then be exempt *"from any obligation under subclause (II) with respect to a statement of reimbursement amount relating to such settlement judgment, award, or other payment related to the notice."*[17]

The SMART Act's proposals to obtain the reimbursable conditional payment amount replace and simplify the dual track system first proposed in H.R. 4796.18 In addition, the SMART Act *eliminates* the $30 "user fee" proposed under H.R. 4796 in relation to obtaining CMS' reimbursable conditional payment amount.

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Mark Popolizio is Vice President of NuQuest Bridge Pointe, a provider of Medicare Secondary Payer Compliance Services. The foregoing was excerpted from an article originally published in their March 2011 *Settlement News*, http://www.nqbp.com/sites/default/files/March2011SettlementNews.pdf. Further excerpts about the SMART Act will appear in future *Lex and Verum.*

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[1] The Medicare Secondary Payer Statute (MSP) is codified at 42 U.S.C. § 1395y, et. seq. In addition, pertinent MSP provisions are contained in Subparts B, C and D of Title 42 of the Code of Federal Regulations (42 C.F.R. §§ 411.20 through 411.50, et. seq.)
[2] *See.*, 42 C.F.R. § 411.21.
[3] 42 U.S.C. § 1395y (b)(2)(A)(ii).
[4] 42 U.S.C. § 1395y (b)(2)(B)(ii)..
[5] 42 U.S.C. § 1395y (b)(2)(B)(iii).
[6] 42 U.S.C. § 1395y (b)(2)(B)(iii) and 42 C.F.R. § 411.24(g).
[7] 42 U.S.C. § 1395y (b)(2)(B)(iii) and 42 C.F.R. § 411.24(c)(2).
[8] *See*, 42 C.F.R. § 411.26.
[9] It is important to note that this is a *separate* and *independent* reporting process from the electronic reporting mandates under Section 111 of the Medicare, Medicaid and SCHIP Extension Act.
[10] Medicare beneficiaries can also view conditional payment information on line through the site MyMedicare.gov which may serve as an additional tool to assist the parties in obtaining conditional payment information. However, from accounts received by the author, there may be questions regarding the accuracy and relatedness of the information posted by CMS in certain situations.
[11] E-Mail correspondence received by NuQuest/Bridge Pointe from CMS dated March 16, 2011. In this correspondence, CMS states: "*With the passage of health care reform, Medicare claims must be filed within one calendar year following the year in which the services are provided (date of service). The 27 month rule is no longer in effect."*
[12] The reader may wish to review an interesting article highlighting this problem entitled *Medicare Won't Let Clients Repay Government Lawyers Say*. This article may be obtained from the MARC website: www.marccoalition.com, select "Press Room."
[13] SMART Act (H.R. 1063) § 2 (vii) (I) (p.2-3).
[14] SMART Act (H.R. 1063) § 2 (vii) (II) (aa) (p.3).
[15] SMART Act (H.R. 1063) § 2 (vii) (II) (bb) (p.3-5).
[16] SMART Act (H.R. 1063) § 2 (vii) (II) (bb) (p.3-5).
[17] SMART Act (H.R. 1063) § 2 (vii) (III) (p.5).

From www:workcompcentral.com


# Adding Paperwork for Brand Names Latest Tool to Control Drug Costs

By Greg Jones, Western Bureau Chief

A new rule in Oregon that requires physicians to provide insurers with a justification form when prescribing certain name-brand drugs is the latest in a series of innovations employed by several states to get a grip on climbing prescription drug costs and the overuse of
narcotic painkillers in workers' compensation systems.

A rule adopted by the Oregon Division of Workers' Compensation (DWC) that took effect April 1 requires doctors to fill out Form 4909 and submit it to insurance companies when writing prescriptions for Celebrex, Cymbalta, Fentora, Kadian, Lidoderm, Lyrica and
OxyContin if the prescription is for more than a five-day supply.

Oregon's price-control strategy differs from its neighbor, Washington, which requires narcotic subscriptions to be filled at a single pharmacy and limits doses; or Texas, which adopted a closed formulary; or Florida, where the Legislature is considering a bill to ban
physician dispensing.

The new Oregon form requires the physician to state whether a low-cost alternative has been previously prescribed and if the name-brand drug will be needed for more than 60 days. It also lists several generic equivalents and notes potential savings over the higher
cost drugs.

For example, the form lists alternatives to Celebrex that include diclofenac sodium, flurbiprofen, naproxen and ibuprofen and says these generics can be up to 98% cheaper per pill. The form also lists morphine sulfate, oxymorphone hydrochloride and tramadol hydrochloride as alternatives to both Kadian, at savings of 63% per pill, and OxyContin, at savings of 72% per pill.

Mandatory use of the form is part of an effort to educate doctors on the costs of the drugs they are prescribing while also providing insurance companies with some information about how long the high-cost prescription might last, according to Nancy Johnston, medical policy analyst for the Oregon DWC. "It brings it home to the doctor that if it costs that much less, maybe they should start there rather than with the name brand," Johnston said. "Sometimes it makes a difference for the patient, especially if the claim is new and hasn't been accepted yet. They may have to pay out-of-pocket."

Educating physicians on the potential savings through generic equivalents could also reduce workers' compensation costs, which is why the Oregon DWC chose these seven drugs, which it says together account for almost 30% of pharmaceutical costs.

More than 90% of workers' compensation prescriptions that can be filled with generic equivalents are filled with generics, said Joe Paduda, co-owner of CompPharma, a consortium of pharmacy benefit managers and owner of the national employer consulting firm Health Strategy Associates. He said pharmacy benefit management companies do a good job of pushing generic prescriptions, but there is always room for improvement.

Paduda said as a rule of thumb, every 1% increase in the number of prescriptions that are filled with generics versus name-brand drugs accounts for a corresponding 1% drop in pharmaceutical costs. "With drug costs accounting for something between 15% and 18% of total work comp medical costs, a 1% improvement in your generic fill rate can be pretty significant," he said.

*Continued, Page 14.*

*Adding Paperwork, from P.13*

In California, prescription drugs account for 13% of overall medical spending, according to the California Workers' Compensation Institute (CWCI). California Labor Code Section 4600.1 says generics should be used when they are available unless the prescribing physician specifically requests the use of a brand-name drug.

The Labor Code promotes the use of generics, but doesn't mandate it, said Mark Webb, vice president of government affairs at the Southern California workers' comp carrier PacificComp. "I think the concern is since there is no real limitation on the discretion the prescribing physician has to say brand (name), that there may be times because of the economics of the pharmacy trade that we're getting brands prescribed when generics would be therapeutically just as good," he said. "That's due to the relationship, perhaps between the manufacturer and the physician."

John Ireland, an associate research director with CWCI, said he doesn't know if forcing California physicians to fill out something similar to Oregon's 4909 form would lead to more generics being used and reduce costs associated with prescription drugs, but he said physicians might be more inclined to consider different prescriptions when they are presented with a list of alternatives.

Ireland similarly wasn't prepared to say whether such a list would have an impact on the troubling data CWCI reported in March, when it appeared to point to a connection between increased prescription rates of Schedule II painkillers and increased prescription costs. CWCI said prescription rates for Schedule II narcotic painkillers increased 521% between 2005 and 2009 while the percentage of payments for these drugs grew 414%, but it made no allegation of wrongdoing on the part of physicians.

Johnston said Oregon did not implement the new regulation to deal with over-prescription or abuse of narcotic painkillers, and was only concerned about cost issues. Paduda said including OxyContin, Fentora and Kadian on the list of drugs requiring justification might nonetheless have the added benefit of reducing the amount of these drugs being prescribed to injured workers. "It will force physicians who don't really think a whole lot about what they're prescribing to take a step back and think about what they're prescribing," he said. "The second thing it'll
do is add an administrative burden to that process. Physicians are hard-pressed; time is their most valuable asset and I think they'll look at this, if they can avoid having to go through that, they certainly will."

Paduda said if other states employ the Oregon rule, and ensure there's an enforcement mechanism behind it, they could reduce what he called the "rampant" use of powerful painkillers that are often prescribed for pain associated with musculoskeletal conditions despite evidence that suggests they are ineffective for that use.
He differentiated between this approach and what is being done in Florida, where lawmakers appear to be closing in on a deal that would prohibit physician dispensing of Schedule II and Schedule III drugs. He said physician dispensing in Florida adds $62 million a year to the state's workers' compensation costs, and on a national level it accounts for at least 23% of work comp drug costs, but most physician-dispensed drugs are generics. He said costs are driven by the volume prescribed and a markup that ranges from 200% to 700%.

Instead, he made comparisons to Texas and Washington. The Texas Division of Workers' Compensation adopted a closed formulary that will take effect Sept. 1 and require physicians to provide justification when prescribing narcotic painkillers to treat conditions where the use of powerful drugs is not recommended under the Official Disability Guidelines published by the Work Loss Data Institute. In Washington, guidelines require that prescriptions for narcotic painkillers be filled by a single pharmacy and be of the lowest possible dosage necessary to lead to a definitive finding of decreasing pain and improving function, according to Dr. Lee Glass, associate medical director for the Washington Department of Labor and Industries.

Glass did not return calls seeking comment on Friday, but speaking at the CWCI conference in March, he said the department is skeptical about the role of opioids in treating injured workers, but wants to make them available to the people who would actually benefit from them, as long as there is evidence that the patient is benefiting.

The new regulation in Oregon doesn't go quite as far as Washington, which Paduda singled out as having the best approach. But he said Oregon is on the right track. "All of this is about making physicians think about what is the clinical justification for providing this particular drug for this particular patient for this particular length of time," he said. "And I think there is very little clinical evidence that supports the use, especially the long-term use of narcotic opioids, for non-cancer pain."

The Foregoing was reprinted with the permission of WorkCompCentral.com. The NAWCJ thanks WorkCompCentral for their support of this newsletter and the ideal of promoting professionalism and collegiality among the nation's workers' compensation adjudicators.

# NAWCJ College 2011 Scholarship Application

_____

Name

_____

Agency Name Title

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Business Mailing Address

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City State ZIP

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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:

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

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Program Date

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Program Date

_____

Judge's Signature Date

Mail your application to: John J. Lazzara
Email: JJL@NAWCJ.org

# 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 OR $195 FOR 3 YEARS. IF 5 OR MORE APPLICANTS FROM THE SAME ORGANIZATION, AGENCY OR TRIBUNAL JOIN AT THE SAME TIME, ANNUAL DUES ARE REDUCED TO $60 PER YEAR PER APPLICANT.**

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**PROFESSIONAL TELEPHONE:** _____Fax:_____

**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:**

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

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Mail your application and check to:

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.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.**

**NAME:** _____ **DATE:** ____/____/____

**Firm or Business:** _____

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**HOW DID YOU LEARN ABOUT NAWCJ?** _____

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Mail your application and check to:

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.org

# THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

There are opportunities for sponsorship of the 2011 NAWCJ Judicial College August 21 through 24, 2011, in Orlando, Florida. If you are interested in sponsoring any of the following:

## WELCOME LUNCHEON PRIME SPONSOR

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Please Contact

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.org

# NAWCJ Judiciary College 2011!

## August 21 through 24, 2011, in Orlando, Florida

**Sunday, August 21, 2011**

**2:30 – 5:00 PM** E. Earle Zehmer Moot Court Competition, Preliminary Rounds

**Monday, August 22, 2011**

**11:30 – 1:40 PM** **NAWCJ WELCOME LUNCH AND MULTI-JURISDICTION COMPARATIVE LAW PANEL**

Honorable Ellen Lorenzen, NAWCJ President, welcoming remarks

Honorable John Lazzara, Florida, introduction of speakers

This panel discussion will bring perspective on how our statutes are different, and how they are similar. Dealing with statutory interpretation is part of our daily routine. Despite the diversity of our particular statutes, we share a multitude of concordant issues and challenges, which this program illuminates.

*Moderator,*

Honorable Melodie Belcher
*Atlanta, GA*
*State Board of Workers' Compensation*

*Speakers,*

Honorable Karl Aumann
*Baltimore, Maryland*
*Maryland Workers' Compensation Commission*

Honorable Diane Beck
*Sarasota, Florida*
*Florida Office of Judges of Compensation Claims*

Honorable Jennifer Hopens
*Austin, Texas*
*Texas Department of Insurance, Division of Worker's Compensation*

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

**1:50 – 2:00 PM** **BREAK AND TRANSITION**

## Monday, August 22, 2011, Cont.

**2:00 - 2:50 PM** **THE POWER OF ADDICTION**

Honorable Robert Judge Cohen, Florida, introduction of speakers

***Moderator:***

Nat Levine
*Broward Orthopedic Specialists*
*Ft. Lauderdale, FL*

***Speaker:***

Marc Gerber, M.D.
*MRG Rehabilitation and Pain Medicine*
*Orlando, FL*

With Florida having the dubious distinction of the pain "pill mill" capital of the nation, claimants often find themselves depending on those medications. What causes addiction? What causes a claimant to abandon all sensibilities for Opioids such as Oxycodone or Hydrocodone? What are the psychological effects of addiction? Do ALL opioids prevent a claimant from performing their job function? Ever want to ask a question on addiction? Red flags in medical reports adjudicators should look for when overutilization is an issue. Don't miss this one.

**2:50 - 3:00 PM** **BREAK**

**3:00 – 3:50 PM** **THE ANATOMY OF THE INJURY**

Honorable David Torrey Judge Torrey, Pennsylvania, introduction of speakers

***Moderator:***

Nat Levine
*Broward Orthopedic Specialists*
*Ft. Lauderdale, FL*

***Speakers:***

Michael T. Reilly, M.D.
*Center for Knee, Shoulder and Hip*
*Ft. Lauderdale, Fl*

Tim Joganich
*ARCCA Inc.*
*Penns Park, PA*

The orthopedic said what? How did the injury cause that? Case management personnel and Judges often question causality based on the orthopaedic surgeon's diagnoses. We will explore the biomechanical forces necessary to produce injuries to the spine and joints. We will review how the objective findings on MRIs combined with the study of the biomechanics allow us to determine the causality and **age** of an injury.

**3:50 - 4:00 PM** **BREAK**

## Monday, August 22, 2011, Cont.

**4:00 – 4:50 PM** **THE AGING WORKFORCE**

Honorable David Imahara, Georgia, introduction of speakers

***Moderator:***

Nat Levine
*Broward Orthopedic Specialists*
*Ft. Lauderdale, FL*

***Speaker:***

Jesse A. Lipnick, M.D.
*Southeastern Rehabilitation Medicine*
*Gainsville, FL*

With the Dow tanking and IRA's rolling over dead, millions of otherwise retired and older workers aren't retiring. The nation's workforce grows older as does the concept that all injuries are treated the same. If you believe that the 60 yr old and 25 yr old claimant heal at the same rate, or the frequency of injuries in these age group are similar, this breakout might open your eyes. Older claimants often have unrelated and pre-existing conditions such as hypertension, diabetes and heart problems. How do those conditions affect their claims for temporary total or permanent total disability? What about "major contributing cause" or "apportionment" issues? Take a sneak peak at the future of claims as our working population gets older.

**4:50 - 5:00 PM** **BREAK**

**5:00 - 5:30 PM** **NAWCJ ANNUAL BUSINESS MEETING**

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

## Tuesday August 23, 2011

**8:45 - 9:45 AM** **LIVE SURGERY**

***Moderator:***

Steven E. Weber, D.O.
*From Orlando Orthopaedic Center, Orlando, Florida*

***Surgeon***

G. Grady McBride, M.D.
*From Orlando Orthopaedic Center, Orlando, Florida*

Get Ready to be "FUSED" to your seats as Orlando Orthopaedic Center presents yet another thrilling Live Surgery… Dr. G. Grady McBride, a board certified spine surgeon and author of numerous spine related publications with over 25 years of experience will be performing a minimally invasive lumbar fusion called TLIF (Transforaminal Lumbar Interbody Fusion). This new procedure and technology allows for a less invasive placement of hardware decreasing patient's hospital stay, blood loss and allowing an early return to work versus the traditional open fusion.

## Tuesday August 23, 2011, Cont.

**10:00 – 11:50 AM** **EVIDENCE, THE COMMAND PERFORMANCE**

Honorable Michael Alvey, Kentucky, introduction of speaker

***Speaker:***

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

One of the evidence greats, in a command performance! Professor Ehrhardt will address issues troubling all adjudicators. Despite the differences between state evidence codes, this speaker's thirty plus years of study, reflection, lecture and publication bring evidence questions into sharp focus. Professor Ehrhardt brings and enthusiasm for the subject, and presents with such force and humor that the audience is always left wanting more.

**11:50 - 12:00 PM** **BREAK**

**12:00 -1:00 PM** **FLORIDA BAR WORKERS' COMPENSATION SECTION JUDICIAL LUNCHEON**

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

An actual workers' compensation appeal will be argued live before a panel of Judges of the Florida First District Court of Appeal. The briefs will be made available to attendees prior to the conference and the Court's Opinion will be posted on the Court's website several weeks after the oral arguments take place. The Court's decision will also be published in the NAWCJ's *Lex and Verum* newsletter.

**2:15 – 4:10 PM** **NEUROSCIENCE AND PSYCHOLOGY OF JUDICIAL DECISION-MAKING FOR WORKERS' COMPENSATION ADJUDICATORS**

Honorable Melodie Belcher, Georgia, introduction of speaker

***Speaker:***

Kimberly Papillon
*San Francisco, CA*
*California Judicial Council, Administrative Office of the Courts*

All Judges recognize that bias has no place in a trial. What many do not recognize is that bias can be implicit in everyday life, and as a result this may accompany the adjudicator to the hearing room. Kimberly Papillon is leading national expert on the subject of implicit bias. She has been a pioneering force in the quest to identify, dismantle and overcome these biases using proven methods. She has conducted this training for the California Judicial Council, various state and federal court conferences, and state and local bar associations. This program will not only change how you think about bias, it will help you first understand how you think about bias.

## Tuesday August 23, 2011, Cont.

**2:00 – 2:10 PM** **BREAK**

**4:20 – 5:10 PM** **CODE OF JUDICIAL CONDUCT FOR WORKERS' COMPENSATION ADJUDICATORS**

Honorable Jennifer Hopens, Texas, introduction of speakers

***Speaker:***
Honorable Rick Thompson
*Atlanta, GA*
*State Board of Workers' Compensation*

Honorable David Langham
*Pensacola, FL*
*Florida Office of Judges of Compensation Claims*

Can there be a more perplexing (or frankly sometimes onerous) topic? Various states are struggling with the disqualification and recusal process; refinements and revolutions have been proposed, discussed, and found wanting. This program will address the focus of the Code of Judicial Conduct on the specifics of unbiased adjudication, and on the ever-ubiquitous "appearance of impropriety." This highly interactive "point/counter point" presentation will illuminate the subject, make you think, and entertain.

**5:15 - 6:15 PM** **RECEPTION**

Non-judicial (Associate) and members of NAWCJ are cordially invited to attend this reception in honor of the Judges.

## Wednesday August 23, 2011 Option One, Mediation

**8:00 - 8:50** **REGISTRATION AND CONTINENTAL BREAKFAST**

**8:50 - 9:00** **WELCOME AND INTRODUCTIONS**

**9:00 - 10:40** **GENERAL SESSION**
**KEYNOTE PROGRAM, DESIGNING THE MEDIATION**

Rod Max, *Attorney and Mediator*
*Miami, Florida*

If you don't know where you are going, how do you know when you get there? Planning is an essential element of every successful endeavor in the professional world, why should a mediation be any different? It is critical to make a careful plan, identify the route you will take and understand the obstructions that may impede your progress. Rod Max and a panel of veteran attorneys will help you with the preparation techniques that will make your mediations successful for you and your clients. This session is two credit hours of **"GENERAL."**

## Wednesday August 23, 2011 Option One, Mediation, Continued

**10:45 - 11:35 BREAKOUT SESSION ONE, SELECT FROM THE FOLLOWING:**

### "ETHICAL ISSUES IN CLOSING THE DEAL."

Michele Riley, *Attorney and Mediator*
*New York, New York*

Every mediation presents ethical considerations. The perspectives and conflicts of multiple parties and their representatives make each mediation a unique challenge. Michele is familiar with the challenge from years of experience as a mediator and as an instructor at the International Center for Cooperation and Conflict Resolution, Columbia University. Michele brings an understanding of recognizing and avoiding ethical conflicts while guiding the parties to resolutions. This session is one credit hour of "ethics."

### "APPLYING DALE CARNEGIE TO MEDIATION."

Dr. Beverly Pennachini, *Dale Carnegie of Central Florida*
*Orlando, Florida*

The Dale Carnegie method is a time proven communication and presentation process. This process focuses on applying foundational principles to reduce stress, measurably improve confidence, communications, and interpersonal skills of individuals and teams. The successful mediator must effectively communicate and works in an environment that requires effective formation of relationships and consensus. This session is one credit hour of "general."

### "CONFLICT RESOLUTION"

Dr. Deri Joy Ronis, *Mediator*
*Sarasota, Florida*

This program will provide practical approaches to working with situations involving anger and violence issues. Attendees will understand methodologies for identifying the presence of these issues, and effectively interacting with the individuals who are affected by them, with a focus on navigating these critical obstacles and accomplishing resolution despite them. A successful mediator recognizes impediments to the process and perseveres. This program reinforces the skills to do so effectively. This breakout is one credit hour of "General."

### "MEDIATOR ETHICS."

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

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 credit hour of "ethics."

**11:35 - 12:35** **GENERAL SESSION**

**LUNCHEON PROGRAM, DEVELOPING RAPPORT WHEN THE MEDIATOR IS CROSS-CULTURALLY CHALLENGED**

Robert Dietz, *Attorney and Circuit Civil Mediator,*
*Orlando, Florida*

How does a mediator develop rapport with ethnic parties and attorneys when the mediator is too male, too pale, and too stale? Gender and cultural issues arise in more and more mediations, and some mediators are ill-prepared to maximize the chance for success by developing rapport. Robert Dietz will share anecdotes from his own and other mediators' and attorneys' experiences, and from some popular movies, to illustrate the necessity of cultural fluency in today's mediations. There's nothing trivial about building rapport with disputants and their representatives from other cultures. This session is one credit hour of "diversity."

**12:40 – 2:20** **SESSION TWO, SELECT FROM THE FOLLOWING:**

**"DIFFICULT CONVERSATIONS."**

Kim Kern, *Attorney and Mediator,*
*St. Louis, Missouri*

The practice of mediation is filled with difficult conversations—things the parties do not want to hear and certainly do not want to credit with any merit. The best-seller "Difficult Conversations," initially published in 2000, has just released a second edition with even more practical suggestions for understanding why those conversations are so tough and how to prepare for them. While there is some soul-searching to be done to determine why a conversation is causing you anxiety, the remainder of the presentation will focus on new ways to analyze the parties and their behavior, thus enabling you to move them towards settlement. The book has great ideas for making difficult conversations a bit less difficult. The presentation will apply the principles detailed in the book to real life mediation situations and give mediators advice for meeting the challenges of those very difficult conversations. This session is one-hour of "general" credit.

**"AVOIDING PESSIMISM IN MEDIATION."**

John Trimble, *Attorney and Mediator,*
*Indianapolis, Indiana*

All of us who attend mediation on a regular basis soon come to realize that pessimism is one aspect of mediation that occurs in *every* mediation session. We learn that if we let pessimism cause us to quit, we would never settle anything. However, pessimism on the part of the parties and their counsel (coupled with impatience) can prevent success. Parties frequently come to mediation with a pessimistic view of the potential for success. Even optimistic or neutral parties can become pessimistic after the first demand and offer or as the negotiation proceeds toward apparent impasse. John will provide guides, principles and tools for addressing pessimism and getting past it. This session is one-hour of "general" credit.

## Wednesday August 23, 2011 Option One, Mediation, Continued

**12:40 – 2:20 SESSION TWO, CONT.**

### THE ABUSIVE USE OF TECHNOLOGY WITHIN DOMESTIC VIOLENCE

Haley Cutler, *Manager of Professional and Community Education, Ft. Lauderdale, Florida*

The presence or history of domestic violence may compromise the integrity of the mediation process. This workshop will identify the effects of modern technology on domestic violence. Recognizing the impact when these otherwise benign tools are used in inappropriate, threatening, and intimidating ways is an important tool for any mediator in the Twenty-First Century. Mediators will leave this training greater understanding of the tools themselves, and the spectrum of potential misuses and abuses that can effect mediation participants and diminish probabilities of success. This session is one-hour of "domestic violence" credit.

### "MEDIATOR ETHICS PANEL."

Moderator: Ross W. Stoddard, III, *Attorney-Mediator (civil & probate) Irving (Las Colinas), Texas*

Panel: Donna Doyle, *Attorney and Circuit Civil Mediator, Orlando, Florida*
Clem Hyland, *Attorney and Circuit Civil Mediator, Orlando, Florida*
Juliet Roulhac, *Attorney and Circuit Arbitrator, Miami, Florida*

Mediator ethics may be the last topic any of us want to study, but the unique and "neutral" role of the modern mediator is rife with challenges that are waiting to ambush even the most conscious and ethical mediator. This panel brings to the subject almost 100 years of legal practice, and perspectives of the litigator, the corporate counsel, and the mediator. Panels of this breadth and depth are rare and exceptional. Come discuss those thorny issues and your perspectives with an incomparable panel of experts. This session is one-hour of "ethics" credit.

**2:25 – 3:15 BREAKOUT SESSION THREE, SELECT FROM THE FOLLOWING:**

### "ETHICAL ISSUES IN CLOSING THE DEAL."

Michele Riley, *Attorney and Mediator*
*New York, New York*

Repeat of 10:45 a.m. session, see above.

### "APPLYING DALE CARNEGIE TO MEDIATION."

Dr. Beverly Pennachini, *Dale Carnegie of Central Florida*
*Orlando, Florida*

Repeat of 10:45 a.m. session, see above.

## Wednesday August 23, 2011 Option One, Mediation, Continued

**2:25 – 3:15 BREAKOUT SESSION THREE, CONT.**

**"CONFLICT RESOLUTION"**

Dr. Deri Joy Ronis, *Mediator*
*Sarasota, Florida*

Repeat of 10:45 a.m. session, see above.

**"MEDIATOR ETHICS."**

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

Repeat of 10:45 a.m. session, see above.

**3:20 – 5:00 BREAKOUT SESSION FOUR, SELECT FROM THE FOLLOWING:**

**"DIFFICULT CONVERSATIONS."**

Kim Kern, Attorney and Mediator,
*St. Louis, Missouri*

Repeat of 12:40 p.m. session, see above.

**"AVOIDING PESSIMISM IN MEDIATION."**

John Trimble, *Attorney and Mediator,*
Indianapolis, Indiana

Repeat of 12:40 p.m. session, see above.

**THE ABUSIVE USE OF TECHNOLOGY WITHIN DOMESTIC VIOLENCE**

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

Repeat of 12:40 p.m. session, see above.

**"MEDIATOR ETHICS PANEL."**

Moderator: Ross W. Stoddard, III, *Attorney-Mediator (civil & probate)*
*Irving (Las Colinas), Texas*

Panel: Donna Doyle, *Attorney and Circuit Civil Mediator, Orlando, Florida*
Clem Hyland, *Attorney and Circuit Civil Mediator, Orlando, Florida*
Juliet Roulhac, *Attorney and Circuit Arbitrator, Miami, Florida*

Repeat of 12:40 p.m. session, see above.

## Wednesday August 23, 2011 Option Two, Medicare Set-Asides - ADVANCED

**9:00 - 3:00 PM** **BREAKOUT ON MEDICARE SET-ASIDES, 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.

**9:00 AM** **INTRODUCTIONS AND REMINDERS, RAFAEL GONZALEZ**

**9:15 – 10:05 AM** **TAKING MEDICARE'S INTERESTS INTO CONSIDERATION: MANDATORY INSURER REPORTING**

John Williams, President and CEO, Gould & Lamb
Mark Popolizio, JD, Vice-President, NuQuest
Todd Belisle, Vice-President, The Center for SNT Administration, Inc.

The panel will go through 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**

Roy Franco, Esq., Vice President, Safeway
Rochelle Lefler, Esq., Corporate Counsel, PMSI
Floyd Faglie, Esq. The Law Office of John Staunton, PA

The panel will discuss Medicare conditional payments. 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.

## Wednesday August 23, 2011 Option Two, Medicare Set-Asides – ADVANCED

**11:10–12:00 PM** **TAKING MEDICARE'S INTERESTS INTO ACCOUNT: MSA ALLOCATIONS, APPROVALS, AND ADMINISTRATION**

Angela Wolfe, RN, Esq., Med-Fi
Jacqui Green Griffin, Esq., Eraclides, Hall et al
Danny Alvarez, Esq., The Center for MSA Administration, LLC

The panel will go through a comprehensive overview of 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 CMS Memorandums. 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 the attorneys representing the parties.

**12:00–1:00 PM** **LUNCH, ON YOUR OWN**

**1:00 – 1:10 PM** **AFTERNOON INTRODUCTIONS AND ANNOUNCEMENTS, RAFAEL GONZALEZ**

**1:10 – 2:00 PM** **PROTECTING SUPPLEMENTAL SECURITY INCOME AND MEDICAID ELIGIBILITY: SPECIAL NEEDS TRUSTS**

Jana McConnaughhay, Esq., Waldoch & McConnaughhay, PA
John Staunton, Esq., The Law Office of John Staunton, PA
Leo Govoni, The Center for Special Needs Trust Administration, Inc.

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 liability 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 to resolve claims in which such benefits are at stake, while maintaining eligibility for SSI and Medicaid, when appropriate.

**2:00 – 2:15 PM** **BREAK**

**2:15– 3:00 PM** **THE UNKNOWN FRONTIER OF MEDICARE SET ASIDES: MSAS AND LIABILITY CLAIMS**

Michael Wescott, NAMSAP President, Moderator
Tom Basserman, CMS San Francisco Regional Office
Sally Stalcup, CMS Dallas Regional Office

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 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. The panel, made up of CMS regional office managers, will venture into the unknown frontier of MSAs and liability claims.

## Wednesday August 23, 2011 Option Three, Multistate Program

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

The Multi-State Workers' Compensation Laws Breakout Session at the Workers' Compensation Educational Conference in Orlando is more than just another program on Wednesday of the Conference—it is a mirror of how the workers' compensation claims world now works. The Multi-State Workers' Compensation Laws Breakout Session focuses on the workers' compensation laws of Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.

**8:00 – 9:00 AM** **CONTINENTAL BREAKFAST IN THE EXHIBIT HALL**

Program Moderator:
R. Briggs Peery, *Attorney*
*Swift, Currie McGhee & Hiers*
*Atlanta, GA*

The Multi-State group continues to grow each year. With the addition of Kentucky for 2011, the group is now comprised of legal experts from nine (9) different jurisdictions. In addition to Kentucky, represented jurisdictions are Alabama, Georgia, North Carolina, Mississippi, South Carolina, Tennessee, Louisiana, and Texas. Our experts present on the latest jurisdictional trends, case law, cost saving techniques and litigation strategies to assist claims' handlers and employer management groups conducting business in the Southeast and Texas. The format offered throughout the day encourages audience questions and participation in a manner that should not be missed.

The Breakout will begin with an opening general session to include an introduction of our participants. These participants are legal experts, workers' compensation judges, and state board regulators. The introduction will be followed by a panel discussion in which our experts will discuss significant legal issues and trends affecting employers and carriers within our nine jurisdictions. The incredible value of the general session is that it offers actual state board representatives discussing what is currently going on in their particular jurisdiction. You get the information directly from the source. Among the topics to be covered by our panel will be tips on how to identify and avoid getting in hot water with the judicial branches of our participating states, where each locale is on the electronic filing horizon, and what, if any, future legislative changes are being considered.

Following the conclusion of our general session, the special state breakout presentations will begin. This has proven to be a hugely successful way to present state specific law in detail in a fashion that encourages interaction between attendees and presenters. Each of the participating states will have presentations covering the uniqueness of their respective workers' compensation systems, some as stand-alone sessions, and others combined in a compare/ contrast type of presentation. Sample topics to be covered will vary depending on the state; however, the presentations will be sure to include state specific forms and form filing requirements, litigation pitfalls, tips on controlling medical expense, and much more. Some attendees choose to move from session to session to get specific information about each jurisdiction being presented. Questions from the attendees are not only welcomed, but encouraged. Where applicable, state forms and presentation outlines will be available in each breakout room.

The conclusion of the morning state breakout sessions will be immediately followed by a complimentary lunch for our attendees provided by the Multi-State Committee members. After lunch, a repeat presentation of the individual state breakout sessions will be offered thereby affording claims' handlers yet another opportunity to attend different breakouts.

To build on the success with which the 2009 and 2010 programs were met, the Multi-State Committee is once again offering a second afternoon program to run concurrently with the afternoon state breakout sessions. This year, we are offering something entirely different in the format of a panel discussion addressing a hypothetical workers' compensation case/fact pattern.

Specifically, we will ask our panel (and the audience) to dissect our hypothetical case in terms of settlement value. The presentation is designed to highlight how different, and in some cases similar, our jurisdictions view the same facts. What is a deal breaker in one state may not be viewed the same way in another. Following the conclusion of the afternoon state breakout sessions and settlement value panel discussion, the Multi-State program will end with a final, general session. Learning has never been more entertaining than how it is offered via our "Workers' Compensation Jeopardy." Back by popular demand, this game show/interactive format will include our "celebrity" host leading and testing our competitors through a multitude of cross jurisdictional workers' compensation issues.

At the conclusion of the afternoon general session, the 2011 Multi-State Book of Workers' Compensation Laws will be provided to all break-out attendees. This book is extremely helpful for those conducting business in more than one state. The book includes the laws from each of our nine (9) participating jurisdictions. Due to high demand, please note, only one book can be offered per attendee.

**8:45 – 9:30 AM** **OPENING GENERAL SESSION:**
**LEGAL TRENDS AND ISSUES FOR 2011**

**State Regulators:**
Gerald Stringer
*Ombudsman, Department of Industrial Relations for the State of Alabama*

Honorable Melodie Belcher
*Director & Chief ALJ, Georgia State Board of Workers' Compensation*

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

Honorable Rick Thompson
*Chairman & Appellate Division Judge, Georgia State Board of Workers' Compensation*

Honorable Tasca Hagler
*Administrative Law Judge, Georgia State Board of Workers' Compensation*

Honorable Sheral Kellar (invited)
*Chief ALJ, Louisiana Office of Workers' Compensation Administration*

Liles Williams
*Chairman, Mississippi Workers' Compensation Commission*

T. Scott Beck
*Chairman, South Carolina Workers' Compensation Commission*

Honorable Rod Bordelon (invited)
*Texas Commissioner of Workers' Compensation*

Administrator of the Workers' Compensation Division of the Tennessee Dept of Labor and Workforce Development (invited)

**9:30 – 9:45 AM** **BREAK IN THE EXHIBIT HALL**

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

**Individual State Presenters:**

Alabama:

Kyle L. Kinney, *Attorney;* Michael P. Barratt, *Attorney*
*Gaines Wolter Kinney, Birmingham, AL*

Georgia:

Douglas A. Bennett, *Attorney;* R. Briggs Peery, *Attorney;* Michael Ryder, *Attorney;* Richard A. Watts, *Attorney;* Lisa A. Wade, *Attorney;* Cristine K. Huffine, *Attorney;* Charles E. Harris, IV, *Attorney*
*Swift, Currie, McGhee & Hiers, LLP, Atlanta, GA*

Kentucky:

Philip J. Reverman, *Attorney*
*Boehl, Stopher & Graves, LLP, Louisville, KY*

Louisiana:

Jeffrey C. Napolitano, *Attorney;* Dennis Paul Juge, *Attorney;* Matthew M. Putfark, *Attorney;* Keith E. Pittman, *Attorney*
*Juge, Napolitano, Guilbeau, Ruli, Frieman & Whiteley, Metairie , LA*

Mississippi:

James M. Anderson, *Attorney;* David B. McLaurin, *Attorney*
Timothy D. Crawley, *Attorney;* J. Michael Traylor, *Attorney*
*Anderson, Crawley and Burke, PLLC, Gulfport/Ridgeland/Tupelo, MS*

North Carolina:

Trula Mitchell, *Attorney;* Sally Moran, *Attorney*
*McAngus Goudelock & Courie, PLLC, Charlotte/Raleigh, NC*

South Carolina:

Regan Ankney, *Attorney;* Mark Davis, *Attorney;* Mikell Wyman, *Attorney*
*McAngus Goudelock & Courie, LLC, Columbia/Charleston, SC*

Tennessee:

Terry L. Hill, *Attorney;* David J. Deming, *Attorney;* James H. Tucker, Jr., *Attorney;* John W. Barringer, Jr., *Attorney;* Heather H. Douglas, *Attorney*
*Manier & Herod, Nashville, TN*

Texas:

Robert D. Stokes, *Attorney;* Steven M. Tipton, *Attorney*
*Flahive, Ogden & Latson, Austin, TX*

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|---|---|
| **11:30 – 12:30 PM** | **LUNCH (PROVIDED FOR ATTENDEES BY MULTI-STATE COMMITTEE)** |
| **12:30 – 2:00 PM** | **REPEAT OF INDIVIDUAL STATE OVERVIEWS WITH Q & A (CONCURRENT SESSION)** |
| **12:30 – 2:00 PM** | **WHY CAN'T WE ALL BE THE SAME?: A CASE/ FACT SETTLEMENT ANALYSIS BY EXPERTS FROM THE NINE MULTI-STATE GROUP JURISDICTIONS (CONCURRENT SESSION)** |
| **2:00 – 2:15 PM** | **BREAK** |
| **2:15 – 3:00 PM** | **CLOSING GENERAL SESSION: WORKERS' COMPENSATION JEOPARDY/DOOR PRIZES/RELEASE OF 2011 MULTI-STATE STATUTE BOOK** |

# We Will See You There!

## The National Association of Workers' Compensation Judiciary, August 21-24, 2011

## Marriott World Center, Orlando