

Lex and Verum



The National Association of Workers' Compensation Judiciary

Number XXX, February 2012

President's Page

By Guest Editors, for
NAWCJ President

Judge Lorenzen has delegated her column space to us this month. Judge Lorenzen is the Administrative or managing judge in the Tampa, Florida district office, which is moving to new quarters in February. As a result, her schedule is tight. Look for her thoughts to return to this space in March.

We are very excited about the fourth annual Judiciary College in August. Though it sounds self-congratulatory, the NAWCJ Board has consistently felt that each year's program was exceptional. There have been many recap conversations in which one or more uttered "how do we top that next year." It has been a recurring theme. In retrospect, we believe that we have managed to do just that each year, however. That is no reason to wait for 2013 though, although we will make every effort to make it better still than 2012. The 2012 curriculum committee has struggled with issues of timing, as there seems there is never room to fit in everything we would like. They have struggled with many competing ideas for programs, all of which would be a great benefit to our audience, but unfortunately all of which cannot fit into the program. They have done a superb job of balancing these issues and recruiting an outrageously talented and diverse group of speakers for the 2012 program.

As such, no discussion of the 2012 program would be complete without recognizing this group for their contributions. They are Hon. Stephen Farrow (GA), Hon. Sheral Kellar (LA), Hon. John J. Lazzara (FL), Hon. Heather Leslie (DC), and Hon. James Szablewicz (VA). Early mornings and missed lunches found this group engaged in conference calls to debate the merits and make decisions about the program. The fruit of their labor is in this issue, starting on Page 18. The NAWCJ acknowledges with gratitude the contribution of these dedicated public servants.

The program is different this year. It begins on Monday morning, rather than with the traditional welcome lunch. This was changed to facilitate the command appearance of Professor Terrel, from Emory University, a nationally recognized expert in judicial writing. He will spend three hours on this topic. We are also fortunate to have Professor Ehrhardt, Florida State University, returning to lecture two hours on evidence. Our third keynote speaker is Susan Constantine, a national expert on "reading people" and making credibility determinations. She will walk the group through a highly interactive program modeled on the television show "To Tell the Truth." The College this year also incorporates three roundtable breakouts (each repeated twice to facilitate your attending two) on the appellate process, judicial technology and social media. These will run parallel to the SAWCA Regulator's Roundtable Tuesday afternoon to facilitate the schedules of those Judges and Commissioners that prefer the discussion of regulatory issues to the discussion of judicial issues in that time slot.

We would be remiss if we did not also take this opportunity to recognize that the efforts of this organization are due to the involvement of some exceptional adjudicators and regulators from around the country. The members of the NAWCJ Board of Directors appears in each issue of the Lex and Verum, in this issue it is on page 7. The officers and Board members devote their time and effort to the growth and continuity of this unique organization. We thank them for their time, their talent, and their dedication.

With that, we will close having accomplished three things. We informed you of our plans. We thanked our committee and Board. And, finally, we assured that Judge Lorenzen will never afford us this space for our ramblings again!

FWCI Hall of Fame Announced!

By: Steve Rissman, Program Chair and President
Florida Workers' Compensation Institute Hall of Fame
National Workers' Compensation Educational Conference



FWCI Board Members, J. David Parrish, Entertainment Chair, Steve Rissman, Program Chair, Gerry Rosenthal, Vendor Chair, and Jim McConaughay, General Chair.

FWCI has recognized that there are a lot of individuals who have made the Florida workers' compensation system work. In response to that, the Institute founded a Workers' Compensation Hall of Fame effective January 2012. To be elected to the Workers' Compensation Hall of Fame, an individual had to devote an entire career to the betterment of the workers' compensation system. Individuals from industry, attorneys and judges were all eligible for nomination and election.

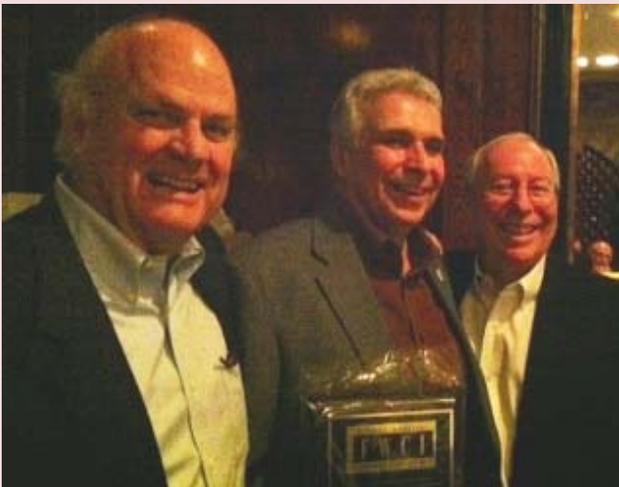
There really can be no question or debate about the qualifications of the individuals elected to the charter class. All of them have noteworthy and spectacular personal qualifications. Some are claimants' lawyers and some are defense lawyers. Three are judges of compensation claims and two are among the giants of industry.

Eighteen individuals were elected to the charter class, and inducted at a dinner on January 13, 2012. The inducted members representing injured workers were: David Parrish, Gerry Rosenthal, Richard Sicking, Ray Malca, Dan Hightower and Glen Wieland. The inducted members representing employers and carriers were Jim McConaughay, Al Frierson, Steve Rissman, George Kagan, Steve Kronenberg and Tom Conroy. The members elected representing the judiciary were: Judge John Lazzara, Judge Stephen Rosen and Deputy Chief Judge David Langham. The members representing industry were: Joe Keene from FCCI and Bob O'Halloran from Claims Center. Attorney Stewart Colling was elected to the charter class posthumously. At the meeting and induction, Steve Rissman was elected President of the organization.

In addition to devoting ones entire career to making the workers' compensation system better, the elected individuals had to have something more. The plaques that were awarded to the elected individuals say it best:

"In appreciation for devoting their distinguished career to the betterment of the workers' compensation system in the State of Florida and for providing leadership, dedication and service to advance the highest philosophy and practice of workers' compensation."

In order to be elected to the Workers' Compensation Hall of Fame, a nominee must receive 75% of the vote of the active members. The charter class was unanimously elected by the Board of Directors of the Florida Workers' Compensation Institute.



Florida Judge and Immediate Past President of the NAWCJ John Lazzara (center) was inducted to the Hall of Fame January 13, 2012.



Florida Judge Steve Rosen (right) was inducted to the Hall of Fame January 13, 2012.

U.S. Bureau of Labor Statistics Releases Preliminary National Census of Fatal Occupational Injuries in 2010



A preliminary total of 4,547 fatal work injuries were recorded in the United States in 2010, about the same as the final count of 4,551 fatal work injuries in 2009, according to results from the Census of Fatal Occupational Injuries (CFOI) program conducted by the U.S. Bureau of Labor Statistics. The rate of fatal work injury for U.S. workers in 2010 was 3.5 per 100,000 full-time equivalent (FTE) workers, the same as the final rate for 2009. Over the last 3 years, increases in the published counts based on information received after the release of preliminary data have averaged 174 fatalities per year or about 3 percent of the revised totals. Final 2010 CFOI data will be released in Spring 2012.

Economic factors continue to play a role in the fatal work injury counts. Total hours worked were up slightly in 2010 in contrast to the declines recorded in both 2008 and 2009, but some historically high-risk industries continued to experience declines or slow growth in total hours worked.

Key preliminary findings of the 2010 Census of Fatal Occupational Injuries:

- The number of fatal work injuries among the self-employed declined by 6 percent to 999 fatalities, more than the decline in their hours worked. The number of fatal injuries among wage and salary workers increased by 2 percent in 2010.
- Fatal work injuries in the private mining industry rose from 99 in 2009 to 172 in 2010, an increase of 74 percent. The fatal work injury rate for mining increased from 12.4 per 100,000 FTEs in 2009 to 19.9 per 100,000 in 2010. The multiple-fatality incidents at the Upper Big Branch Mine and the Deepwater Horizon oil rig are included in these figures.
- Fatal work injuries in the private construction sector declined by 10 percent from 2009 to 2010 and are down nearly 40 percent since 2006.
- Work-related fatalities resulting from fires more than doubled from 53 in 2009 to 109 in 2010--the highest count since 2003.
- Workplace homicides declined 7 percent in 2010 to the lowest total ever recorded by the fatality census, but workplace homicides involving women increased by 13 percent.
- Fatal work injuries among non-Hispanic black or African-American workers declined by 9 percent in 2010 while fatalities among non-Hispanic white workers were higher by 2 percent. Fatal work injuries involving Hispanic or Latino workers were down 4 percent in 2010.
- The number of fatal workplace injuries among police officers increased by 40 percent, from 96 in 2009 to 134 in 2010.

Profile of 2010 fatal work injuries by type of incident

The number of fatal work injuries resulting from fires and explosions rose from 113 in 2009 to 187 in 2010, an increase of 65 percent. The increase was led by an increase of 106 percent in fatalities resulting from fires which rose from 53 in 2009 to 109 in 2010. Of the 187 fatalities involving fires and explosions, 82 occurred in multiple fatality incidents.

Workplace homicides fell by 7 percent in 2010. The preliminary workplace homicide total for 2010 (506 cases) represents a decline of more than 50 percent from the high of 1,080 homicides reported in 1994. Despite the overall decline, workplace homicides involving women were up 13 percent in 2010. Workplace suicides declined slightly from the series high of 263 cases in 2009 to 258 cases in 2010. Even with the decline, the 2010 preliminary count of workplace suicides is the third highest annual total for the fatal work injury census.

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Fatal falls declined 2 percent in 2010 (from 645 in 2009 to 635 in 2010). Overall, fatal falls are down 25 percent from the series high of 847 fatal falls reported in 2007. Since 2007, fatal falls in the private construction industry have decreased by 42 percent. Fatal injuries resulting from being struck by objects or equipment were also lower, down 4 percent in 2010 to 402. Fatal work injuries involving exposure to harmful substances or environments were up slightly, but electrocutions declined.

Transportation incidents decreased slightly in 2010 relative to 2009, but still accounted for nearly 2 out of every 5 fatal work injuries in 2010. Nonhighway incidents, such as an off-road tractor overturn, were higher in 2010 (up 4 percent) as were transportation incidents involving pedestrians and railways. Fatal occupational injuries involving water vehicle incidents and aircraft incidents were both lower in 2010. (Note that transportation counts presented in this release are expected to rise when updated 2010 data are released in Spring 2012 because key source documentation detailing specific transportation-related incidents has not yet been received.) For more detailed information on fatal injuries by incident, see the 2010 tables at www.bls.gov/iif/oshcfoi1.htm.

Profile of fatal work injuries in 2010 by occupation

Fatal work injuries in the construction and extraction occupations declined by 9 percent in 2010 to the lowest level since the series high reported in 2006. Construction trades worker fatalities were down 15 percent (from 621 in 2009 to 530 in 2010) and have declined 46 percent since 2006. Fatal work injuries involving construction laborers, the worker subgroup accounting for the highest number of fatalities in the construction trades worker group, were down by 16 percent in 2010 to 193 fatal work injuries. In contrast, fatal work injuries involving extraction workers were up sharply, from 59 in 2009 to 91 in 2010 including a number of fatal work injuries from the Upper Big Branch Mine and Deepwater Horizon oil rig incidents.

Fatal work injuries involving farming, fishing, and forestry workers increased by 9 percent in 2010. Fatalities involving agricultural workers, including farmworkers and laborers, rose from 127 in 2009 to 156 in 2010. Fatalities among logging workers also increased in 2010 from 36 in 2009 to 59 in 2010, but fatalities among fishers and related fishing workers declined.

The number of fatal work injuries among protective service occupations increased by 6 percent in 2010 after two years of declines. The increase was led by fatalities among police officers which rose 40 percent from 96 to 134 in 2010. Of the 134 fatal work injuries among police officers, 57 involved highway incidents and 48 involved homicides. Most other subgroups in the protective service occupational group declined in 2010.

Fatal work injuries involving workers in transportation and material moving occupations were higher by 5 percent in 2010 and accounted for about one quarter of all occupational fatalities. Driver/sales workers and truck drivers, the subgroup with the highest number of fatal work injuries within the transportation and material moving group, led the increase. Fatalities in this subgroup rose from 647 in 2009 to 683 in 2010, an increase of 6 percent.

Fatal work injuries involving resident military personnel decreased 44 percent in 2010 to 42 fatalities.

Profile of fatal work injuries in 2010 by worker characteristics

The number of fatal work injuries rose 2 percent among non-Hispanic white workers in 2010, but were lower for both non-Hispanic black or African-American workers and for Hispanic or Latino workers. The largest decline was among non-Hispanic black or African-American workers who recorded 9 percent fewer fatalities in 2010 after a decline of 21 percent in 2009. With the lower count in 2010, fatal work injuries among black or African-American workers have decreased by more than a third (37 percent) since 2007.

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NAWCJ

National Association of Worker's Compensation Judiciary

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Fatal work injuries among Hispanic or Latino workers were down 4 percent in 2010 to the lowest level since 1997. Of the 682 fatal work injuries involving Hispanic or Latino workers, 427 (or 63 percent) involved foreign-born workers. Overall, there were 774 fatal work injuries involving foreign-born workers in 2010, of which the greatest share (297 or 38 percent) were born in Mexico.

Total hours worked for wage and salary workers increased slightly in 2010, but declined by nearly 2 percent for the self-employed. Fatal injuries to self-employed workers (the lowest annual total since the fatality census was first conducted in 1992) declined 6 percent from 2009 to 2010, while fatalities among wage and salary workers rose by 2 percent.

Fatal work injuries incurred by women increased by 6 percent in 2010, but declined by 1 percent for men. Fatal work injuries increased for workers under 18 years of age, workers age 25 to 34, and for workers 55 years of age and older. All other age groups recorded lower numbers of fatalities.

Profile of fatal work injuries by state

Twenty-seven states and the District of Columbia reported higher numbers of fatal work injuries in 2010 than in 2009, while 23 states reported lower numbers. The individual state statistics are represented in Table 5.

The foregoing material was excerpted from the August 2011 Preliminary BLS National Census of Fatal Occupational Injuries In 2010. The full report is here: <http://www.bls.gov/news.release/pdf/cfoi.pdf>

Table 5. Fatal occupational injuries by state and event or exposure, 2009-2010

State of injury	Total fatal injuries ¹	
	2009 ² (revised)	2010 ^{3,p}
Total	4,551	4,547
Alabama	75	86
Alaska	17	39
Arizona	76	75
Arkansas	75	87
California	409	302
Colorado	83	80
Connecticut	34	49
Delaware	7	8
District of Columbia	11	16
Florida	245	215
Georgia	110	82
Hawaii	13	19
Idaho	27	33
Illinois	158	203
Indiana	125	115
Iowa	80	75
Kansas	76	84
Kentucky	101	68
Louisiana	140	104
Maine	16	19
Maryland	65	69
Massachusetts	64	51
Michigan	94	141
Minnesota	61	69
Mississippi	67	68
Missouri	142	107
Montana	52	36
Nebraska	57	54
Nevada	24	28
New Hampshire	6	5
New Jersey	99	78
New Mexico	42	38
New York (including N.Y.C.)	185	182
New York City	63	68
North Carolina	129	134
North Dakota	25	30
Ohio	137	156
Oklahoma	82	91
Oregon	66	45
Pennsylvania	168	219
Rhode Island	7	9
South Carolina	73	65
South Dakota	24	36
Tennessee	111	137
Texas	482	456
Utah	48	42
Vermont	12	13
Virginia	119	104
Washington	76	104
West Virginia	41	95
Wisconsin	94	91
Wyoming	19	34

Only 197 Days until Judiciary College 2012
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NAWCJ Judicial College 2012

August 19 through 22, 2012

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\$200.00 if paid on or before July 31, 2012

\$225.00 if paid on or after August 1, 2012

Non-NAWCJ Members

\$240.00 if paid on or before July 31, 2012

\$265.00 if paid on or after August 1, 2012

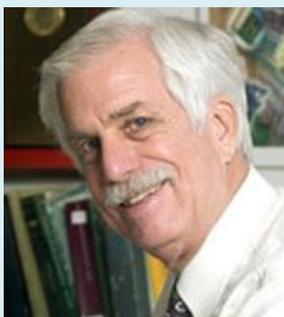
More Information At:

www.NAWCJ.org

www.FWCIweb.org

Judge Lazzara JL@NAWCJ.org

Professor Ehrhardt Returns!



He wrote the book (literally)! Professor Ehrhardt has been cited as an authority by appellate courts more than 500 times. He is an exceptionally gifted teacher with an ability to make the subject come alive. His energetic and dynamic presentations never cease to be simply amazing. He will present two hours of evidence for adjudicators this summer.



As Seen on CNN, MSNBC, ACB, CBS, and HLN: Susan Constantine!

Susan Constantine is a leading body language expert, renowned speaker and trainer specializing in “deception detection” through verbal and non-verbal communication. She conducts seminars and workshops for corporate clients, lawyers, investigators, government agencies, and individuals sharing her body language expertise in easy to grasp formats. Her expertise focuses on understanding and predicting human behavior thru the hidden “Secrets of Reading Body Language.

MULTISTATE COMPARATIVE LAW PANEL

Our distinguished panel of Judges from Florida, Kentucky, Mississippi, Texas, and 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. Each year a different jurisdiction contributes a moderator for this program and in 2012 it is the Honorable Jennifer Hopens of Texas. Judge Hopens is also a NAWCJ Board member.



What Will Happen in Worker's Compensation in 2012

There's a lot happening in the work comp industry: a hardening market; frequency ticking up; Consolidation/mergers/acquisitions and buyouts; legislative and regulatory changes; and management moves. And all this against the backdrop of a very big election year. So here's what I'm going to be watching for.

1. Health reform will impact workers comp.

I have no idea what the Supremes will do when they rule on the constitutionality of the PPACA, aka health reform bill. Their ruling could kill the law, leave it alone, or eliminate the individual mandate. But no matter what the official decision is, the health financing and delivery industries have changed dramatically over the last two years, and that change will only accelerate over the next two.

The rapid consolidation of health care providers, growth (via acquisition) of delivery systems, and acquisition of providers and provider-based managed care plans by payers is changing the landscape, as is the expansion of Medicaid. Health plans KNOW they have to change their models, get bigger, invest billions in technology and solidify and strengthen relationships with providers, regardless of whether reform survives or not.

All health plans are very tightly focused on those strategic imperatives. As a result workers comp, long a sideline, has been relegated to a position of insignificance, with one exception - Anthem. I'd expect to see the Big Blue continue to expand their work comp presence, but they'll be the only one to keep pushing. The rest are too busy worrying about the 98% of the business that is group, Medicare and Medicaid.

For comp, network discounts will diminish, That doesn't mean medical costs will increase, as discounts don't always, or even most of the time, equal savings. Network options will change, and we'll see more piecemealing of networks as other payers follow the lead of Broadspire and now ESIS and diversify their network relationships.

2. Mergers and acquisition in comp are going to accelerate.

There was a lot last year, but 2012 is going to be the year of the deal. With the pending changes in capital gains slated to kick in a year from now, several private equity-owned companies getting well past the three year horizon (and a couple past five), some long-time entrepreneurs looking to ride off into the sunset, and what appears to be an uptick in valuations, it's a no-brainer.

3. Comp rates will go up.

Well, this already started, but it bears repeating. After a way-too-long soft market, it's about time pricing sanity returned. Higher work comp premium rates will drive business to TPAs, encourage risk managers to, well, actually manage work comp risks, increase vendor business (think UR/case management, PT, bill review, and networks) and generally help all of us in the industry.

4. Attacking opioid addiction and dependency will top the agendas of many payers', regulators', and employers'.

Led by reports and publicity from notables including Gary Franklin, Medical Director of Washington State's work comp fund, Alex Swedlow of CWCI, WCRI and NCCI, there's been a tremendous awakening among stakeholders to the human and financial cost of opioid abuse in workers comp. The quicker payers are already moving from "oh my it's a big problem" to "here's the plan to fix it."

It's about time. The damage caused by rampant over-prescribing of opioids is immeasurable. Devastated families, dead claimants, rising insurance premiums, increased crime, completely unnecessary disability and higher costs for employers and taxpayers are the result.

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Identification of claimants at high risk for addiction and treatment of those individuals must - must be a priority. Intelligent payers will stop ignoring the problem or hoping it will go away, and work to a) prevent more overuse and b) help those already addicted/dependent to get healthy.

5. Now that Illinois is starting to approve Preferred Provider Programs, there will be lots of interest followed by disappointment that they really don't do much to control over-utilization.

I know, this is a gimme. The good folk at the Illinois Department of Insurance have been forced to come up with regulations to implement legislation that is about as convoluted as it could possibly be. Unfortunately, claimants who are interested in gaming the system will use the loopholes in the PPP system to get what they want when they want it from the providers they want to get it from. The PPP will only really work for claimants who weren't interested in gaming the system. Unfortunately the PPP isn't much of a solution.

6. As work comp premiums begin to rise, we're going to see a renewed interest in loss control, risk management, and medical management.

With rate increases coming in California, Florida, and Massachusetts (among other states), employers are going to have to dust off those yellowed risk management plans, recall the basics of loss prevention, and perhaps re-hire the loss control pros they laid off over the last few years when their services weren't 'needed'.

Look for the big consulting houses, and smaller boutique firms, to emphasize their loss control expertise and capabilities; mono-line (and heavily-workcomp-focused) carriers will also tout their knowledge and ability to help employers control comp program costs.

7. The physician dispensing cost control bill currently pending in Florida will pass.

After several years of political intrigue, huge campaign contributions from companies making enormous profits from physician dispensing, and continual efforts by good actors in the system, outraged taxpayers and employers will finally succeed in limiting reimbursement for drugs dispensed by docs to the original underlying price of the non-repackaged drug. I hope. And so should you.

That won't be the end of the issue; Maryland, South Carolina, and other states are also battling to limit this latest and greatest abuse of the comp system. Even if we win in Florida, there will be many more battles ahead.

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Your 2011-12 NAWCJ Board of Directors

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8. More payers will diversify their provider network partners.

As Aetna winds up its work comp network operation, payers' interest in exploring other network options will increase. Following the lead of Broadspire and ESIS and enabled by technology that makes it easier than ever to mix and match provider networks, we'll see several other large payers award more network business to more network companies. Expect firms such as Anthem, HFN, Horizon, Cofinity, Rockport and Prime to gain share. That doesn't mean anyone should count Coventry out. They are the oldest, largest, and most entrenched, and are working hard to address network gaps that will arise when their relationship with Aetna finally ends (which is still a long way away).

9. York Claims will finish the year well on its way to becoming a top-tier TPA.

Through savvy deal-making, a pretty intelligent sales approach, and what is by several accounts a strong focus on doing the right thing for the employer (and not just generating fees for York), York has transformed itself from what was a not-very-good TPA a decade ago to a well-regarded and very well run organization. York's robust technology and strong market share in key sectors (especially governmental entities in several states), coupled with the expertise they've added as a result of acquisition (I'm especially impressed with the JI Companies deal) bodes well for their future. Perhaps I should modify the headline - York already is a top tier TPA in terms of capabilities; these capabilities will drive them towards the top tier in terms of revenue and market share.

10. Oklahoma will eliminate the requirement that all employers have workers comp insurance.

There are moves afoot in several states to reconsider the work comp mandate, but none have more traction than the one in OK. Whether it's because they share a long border with the only state that doesn't require comp (Texas), many of their larger employers also have big operations in Texas and like the opt-out there, or there's something more ephemeral, a sense that work comp as currently constructed doesn't work the way it should anymore, Oklahoma may well be the next state to allow employers to opt out.

There's already a study group authorized by the State Senate that's looking into the feasibility of the change; their findings should be released in the next few weeks. That will be just in time for the next legislative session which starts in February. This may not become law in 2012, but I'd expect some movement that allows some employers to opt out, perhaps in a pilot program as early as next year.

Joseph Paduda is a nationally recognized expert, speaker, media source and author on managed care in group health and in workers' compensation. He translates complex data into actionable knowledge and is able to take an aerial view or to drill down into intricate niches. He writes the popular weblog Managed Care Matters attracting more than 1500 unique visitors a day and a good deal of comment in the health care world. His blogs are frequently republished on other sites. Mr. Paduda has a Master's of Science Degree in Health Management from American University. Health Strategy Associates is based in Madison, CT and can be reached at 203-314-2632 or jpaduda@healthstrategyassoc.com.

Upcoming Conferences:

The 2012 SEAK , July 16-19, 2012, Hyannis, Cape Cod, MA, \$975.00,
<http://www.seak.com/wcandocmedresources.html>

The Mississippi Workers' Compensation Educational Association, Biloxi, MS. \$225.00.
<http://www.mwcea.org/ConferenceRegistration.asp>

South Carolina Workers' Compensation Education Association, February 26 - 28, 2012
Charleston SC, \$235.00-\$475.00.
<http://www.scwcea.org/index.htm>

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

Some actual questions from Trial:

"You were there until the time you left, is that true?"

"The youngest son, the 20 year old, how old is he?"

"Were you alone or by yourself?"

"Were you present in court this morning when you were sworn in?"

"Do you have any children or anything of that kind?"

"You don't know what it was, and you didn't know what it looked like, but can you describe it?"

Top 10 Bizarre Workers' Comp Cases for 2011

By: Thomas A. Robinson

Last January, I shared with readers the fact that prior to his death, Arthur Larson and I had an annual ritual in which we'd meet in Arthur's home on Learned Place, near Duke University's campus, and review our respective lists of bizarre workers' compensation cases reported during the previous year. As I mentioned in last year's "bizarre" post, one must always be respectful of the fact that while a case might be bizarre in an academic sense, it was intensely real, affecting real lives and real families. And so, to continue in the spirit of that January ritual, here follows my list (in no particular order) of 10 bizarre workers' compensation cases during 2011. Last year a few of you sent me some additional cases for consideration. I'd love to hear from any of you again. Send them to compwriter@gmail.com.

CASE #1: Paving Worker Strikes Bowling Ball with Sledgehammer, Loses Eye and Workers' Comp Claim (Pennsylvania)

As our grandmothers taught us, "idle hands are the devil's tools." Consider a Pennsylvania case where a laborer and others on his crew found an old bowling ball near the parking lot where they were working. A number of workers within the crew first took turns using the bowling ball as a shot-put. Then a challenge arose as to whether any of them could break the ball with a sledgehammer. On the claimant's second hit, the ball shattered and a piece of it flew into his eye. The Workers' Compensation Judge ruled that the actions of the claimant, while careless, did not take him outside the course and scope of the employment. The Board disagreed, however, finding that claimant had acted in violation of a positive work order—after he struck the ball the first time, it cracked, and his supervisor told him to "knock it off" and also indicated to claimant that he would not take claimant to the hospital if he were injured hitting the ball. The appellate court observed that there were three criteria for establishing a positive work order violation: (a) that the injury must be caused by the violation of the work order; (b) that the employee must know about the order; and (c) that the order must implicate an activity not connected with the employee's work duties. All three criteria existed here and the Board's decision was affirmed.¹

CASE #2: Worker's Termination for Distributing Pornography to Co-Workers Does Not Disqualify Him from Continued Disability Benefits (Utah)

In May, the Court of Appeals of Utah affirmed an award of continued workers' compensation benefits to an injured worker in spite of the fact that he was terminated—after beginning a light duty program—for sending pornographic images to other employees' cell phones and on company email accounts. The court agreed that there was no evidence the worker actually intended to sever his employment relationship with his employer. Nor had the worker refused light duty. The court did not find persuasive the employer's contention that light work remained available to the worker, that he had constructively declined it by his improper activities.²

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CASE #3: Home-Based Worker Trips Over Her Dog Sustaining Compensable Injury (Oregon)

Dogs may be our best friends, but in a case from Oregon, a home-based worker tripped over her small dog as she walked from her home to her nearby garage to retrieve some work-related supplies. The state's Workers' Compensation Board denied the claim, concluding that the worker's injury did not arise out of her employment because (a) she was not exposed to the risk by virtue of her employment, but encountered the same risk any time that she stepped outside the door of her home and (b) because the risk arose from her home environment, which was outside of the employer's control. The appellate court disagreed. Quoting *Larson's Workers' Compensation Law*, § 16.10, the court found the employer's lack of control over the conditions of the worker's premises was not material. While the employer might not have had control over the worker's dog, it had control over whether the worker worked away from the employer's premises. Once it was established that the home premises was also the work premises, it followed that the hazards of the home premises encountered in connection with the performance of the work were also hazards of the employment. The case was remanded since there had been no determination as to whether the injuries arose in the course of the employment.³

CASE #4: Employee's Tort Action Against Employer and Related Corporation Where Worker Fell From Helicopter While Hunting Deer in Mexico May Move Forward (Louisiana)

In a truly bizarre factual setting, and in a split decision, a Louisiana appellate court reversed a decision granting summary judgment in a tort action filed by an employee against his employer and a related corporation for injuries the employee sustained when he fell from a helicopter in Mexico while attempting to capture a deer with a net that he had fired from a modified rifle. The helicopter was owned by the employer ("GMI"), a firm specializing in aerial herbicide application to power line, pipeline, and drainage canal right of ways to control brush and tree growth. The other corporation ("BMI") was owned by the employer's president. BMI had no employees, apparently operated on a cash basis, and occasionally used some of the employer's workers to capture and transport deer from wild areas in Mexico to land BMI leased in Louisiana and Texas. The employee alleged that he was exclusively employed by the employer and was not in the course and scope of his employment with the employer when he fell from the helicopter in Mexico. He alleged as well that he was not employed by BMI and he contended that the employer and BMI had been negligent in various ways, including negligent design by BMI of a restraint system within the helicopter. Alternatively, if his injuries were sustained in the course and scope of his employment with either defendant, the employee contended that both defendants were liable in tort because they knew that his accident was substantially certain to follow since another employee earlier had fallen in the same manner using the same helicopter and harness while netting deer in Mexico. Reversing the trial court's finding that the injured employee was the general employee of the employer and the special employee of BMI, the court indicated there was at least a factual issue as to whether he was employed by BMI at all and a question as to whether he was engaged in employment activity for the employer at the time of his injury. Further, there was a question as to whether the employee had been "borrowed" by BMI. Because of the factual issues, summary judgment on those issues was not appropriate. The court did agree that in spite of the earlier accident involving the other employee, the employee had established no evidence of intentional injury; the trial court's summary judgment on that issue was appropriate.⁴

CASE #5: Injured Worker's Fatal Heart Attack While Holding Termination Letter Is Not Compensable (Pennsylvania)

A fatal heart attack sustained by an injured worker two days after he received a termination letter from his employer was not a work-related incident, held a Pennsylvania appellate court in July. Affirming a denial of benefits by a workers' compensation judge and the Board, the court acknowledged that the decedent had sustained a work-related injury to the shoulder, had begun light duty work, but was subsequently directed by the employer to return to his regular job duties, and then told to go home when the worker's attorney sent the employer a letter indicating the worker was unable to work. The employer then sent its termination notice. Testimony indicated that for two days after receiving the letter, the worker was distraught and succumbed to the heart attack while holding the letter. The appellate court indicated, however, that it was for the trier of the facts to make a determination and the WCJ and the Board had found against the worker's widow. The court also observed that there was a lack of expert medical evidence indicating that a causal connection existed between the actual employment and the onset of his heart attack.⁵

Continued, Page 12.

CASE #6: Risk of Obese Employee's Getting Stuck in Cafeteria Booth Is Not "Personal Risk;" Award Should Have Been Given for Cracked Femur (Indiana)

A morbidly obese long-term employee, who weighed some 360 pounds, suffered from diabetes, and walked with a cane because of issues with her knees, was not engaged in an "activity of daily living" when she suffered a cracked femur as she tried to remove herself from a booth in a university cafeteria where an employee appreciation dinner had been given. The appellate court held that the Full Board erred when it determined that the risk that resulted in the employee's injury was personal to her and that there was no increased risk created by the work or the work environment for the injury she sustained. The court observed that while the employee's pre-existing physical condition may have contributed to her injuries and undoubtedly hampered her recovery, her injuries were at least partially attributable to her exit from the booth. Accordingly, the Board's finding was not supported by substantial evidence.⁶

CASE #7: Armed Robbery of Liquor Store Was Part of Worker's Normal Working Conditions; No Recovery for Mental Injury Claim (Pennsylvania)

In Pennsylvania, in order to recover workers' compensation benefits for a psychic injury, the worker must prove that he or she was exposed to "abnormal working conditions and that his psychological problems are not a subjective reaction to normal working conditions" [see *Babich v. Workers' Comp. Appeal Bd. (CPA Dept. of Corrections)*, 922 A.2d 57, 63 (Pa. Cmwlth. 2007)]. In September, a Pennsylvania appellate court held that a liquor store employee, who was diagnosed with posttraumatic stress disorder after an armed robbery at the store, had not been subjected to abnormal working conditions. Ninety-nine similar robberies had occurred in the employer's retail stores since 2002; indeed, four had occurred in the immediate vicinity within weeks of the robbery involving the claimant worker. Robberies are a "normal" condition of liquor store employment, held the court.⁷

CASE #8: Friend of Co-Worker Follows Claimant in High-Speed Auto "Chase," Then Shoots Him; Court Says No Recovery Because, Among Other Things, Claim Barred by "Going and Coming Rule" (Maryland)

In October, a Maryland appellate court affirmed a decision of a circuit court that had reversed an award of workers' compensation benefits to hotel worker who was shot and rendered a paraplegic by a friend of a co-worker with whom claimant had an argument over several supply carts being utilized for a hotel banquet. The evidence tended to show that claimant and the co-worker argued and that the claimant touched the co-worker on the hand, at which point the co-worker called a friend, telling him to get his "thing," and come "take care of" the claimant. The "friend" got his gun, drove to the hotel, and then accosted claimant, who'd been told by the supervisor (in light of the loud argument between the two workers) to go on home since his shift was almost over. As the claimant left in his vehicle, he was chased for some 13 miles at high speeds by the co-worker's friend. When the vehicles finally stopped, the assailant shot and seriously wounded claimant. In spite of the work-related origin of the argument between the claimant and the co-worker, the court held that claimant's injuries were not covered by the Act because the assault that caused them was not "directed" against him in the course of his employment. Citing various sections of *Larson's Workers' Compensation Law*, the court held that the injuries did not arise of the employment. And, in an unusual application of the rule, the court also held that under the going and coming rule, claimant's injuries were not compensable.⁸

CASE #9: Injured Worker's "Helping Out" in Wife's Custom-Made Goose Call Business Does Not Result in Disqualification From Further Disability Benefits (Louisiana)

That a workers' compensation claimant helped make custom goose calls for his wife's company, sometimes handled phone orders, and was pictured on the company website giving instructions on how to use the calls, did not constitute workers' compensation fraud where other evidence indicated he had no earnings from the business and performed no other work for hire. The court observed that the goose call company's tax preparer testified that the claimant did not receive a salary and the employer presented no evidence that the claimant was making any money or was capable of doing any physical work.⁹

CASE #10: Worker Fails in Attempt to Recover for Alleged Exposure to "Chemical Cloud" While Driving (Wyoming)

The Supreme Court of Wyoming affirmed a decision by a trial court that had, in turn, upheld the denial of a workers' compensation claim filed by a worker who alleged she sustained an injury arising from exposure to a "chemical cloud"

Continued, Page 13

while driving in the course of her employment. The high court agreed that the medical professionals who evaluated the worker were unable, without mere speculation, to opine that her injury more probably than not arose out of her employment, as required by Wyo. Stat. Ann. §27-14-102(a)(xi). The court agreed that the worker's story was incredible and uncorroborated, and an investigation produced no possible source of the alleged chemical cloud. While she described a significant event involving a "horrible smell" that caused her to experience serious symptoms, required her to pull off of the highway, caused her to lose track of time and perhaps lose consciousness, she did not seek medical care until two days later after meeting with her client.¹⁰

¹ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Pa. Commw. LEXIS 533. Then click on the red button Search for Free. Note for all "Free Versions," if you haven't registered for free at lexisONE, you will be prompted to do so in order to access the free case law. See generally Larson's Workers' Compensation Law, § 33.01.

² Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Utah App. LEXIS 159. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 84.04.

³ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Ore. App. LEXIS 715. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 16.10.

⁴ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 La. App. LEXIS 856. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, §§ 67.01, 103.04.

⁵ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Pa. Commw. LEXIS 344. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 10.02.

⁶ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Ind. App. LEXIS 1434. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 9.02.

⁷ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Pa. Commw. LEXIS 467. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 44.05.

⁸ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Md. App. LEXIS 140. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, §§ 8.01, 13.01.

⁹ Access the case on <http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisplayCaseSearchForm&11loc=L1ED>. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 La. App. LEXIS 1165. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 39.03.

¹⁰ Access the case on lexisONE free case law. Click on tab for Free Case Law. Click on the radio button for Search by Citation. Enter this citation: 2011 Wyo. LEXIS 34. Then click on the red button Search for Free. See generally Larson's Workers' Compensation Law, § 130.05.

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Interesting Wage and Hour Stories Continued

Wage and hour is a concern for injured workers, and for those Judges that are also supervisors. In the news last month, Lady Gaga's former personal assistant, Jennifer L. O'Neill has sued the pop star for over \$379,000 in overtime pay. Ms. O'Neil reportedly worked for Lady G for about two years, until she was terminated in March 2011. Ms. O'Neil alleges that she essentially worked or was on-call for virtually the entire period performing duties including confirming Lady Gaga's schedule, reviewing and reconciling her credit card statements, ordering meals and ensuring they were correctly prepared and served at specific times, ensuring the availability of chosen outfits, and keeping Lady G on schedule. She alleges that her annual salary was \$75,000, but she was not paid overtime for working more than 40 hours a week. The suit is filed under the federal Fair Labor Standards Act and New York state labor law.



NCOIL to Look at Doctor Dispensing, Repackaged Drugs Feb. 25

By Bill Kidd, Central Bureau Chief

The National Conference of Insurance Legislators (NCOIL) reports an NCOIL committee will take "a hard look" at physician dispensing of repackaged drugs to injured workers when the organization meets in Biloxi, Miss., on Feb. 25. The Workers' Compensation Insurance Committee plans to examine the issues, which represent "a huge cost for state workers' comp systems," in hopes of providing legislatures with guidance for possible legislation, NCOIL said in announcing the meeting.

NCOIL is an organization of state legislators whose main area of public policy concern is insurance legislation and regulation. Many legislators in NCOIL either chair or are members of the committees responsible for insurance legislation in their home states. NCOIL's work includes developing model insurance-related legislation for states to adopt. Insurers and employers have complained that repackaging of drugs removes the medications from caps imposed by fee schedules, and that health care providers take advantage of that loophole by dispensing the repackaged drugs at higher prices. Jordan Estey, NCOIL director of legislative affairs and education, told WorkCompCentral that the committee is responding to a resolution passed at the organization's meeting last November in Santa Fe, N.M.

The resolution instructs the panel to "investigate medical cost trends and related state cost-containment strategies, including state efforts on physician dispensing and drug repackaging." The committee also will be looking later at coverage issues for volunteer firefighters and migrant farm workers, and "cross-border rules" affecting employees injured when working temporarily or traveling outside their home state. Estey said NCOIL has received inquiries from groups, including health care providers, insurers and pharmacy representatives wanting to present materials to the committee.

NCOIL reports that "central to the issue are concerns that drugs are being repackaged using more expensive reimbursement codes than the originals - up to 300% more costly in some cases."

Insurers and other businesses contend that repackaged drugs - which may be dispensed directly through physician offices instead of through local pharmacies - are leading to a significant cost burden on companies and local economies, NCOIL said. NCOIL reported the committee action responds to efforts in California, Florida and other states to find appropriate solutions.

The initiative also follows publication in 2011 of a National Council on Compensation Insurance (NCCI) study that reported a significant growth in physician dispensing of repackaged drugs and related costs. NCCI said drugs dispensed by physicians (sometimes at two to three times the cost charged by pharmacies) continued increasing as a share of total drugs used in workers' compensation in states such as Georgia that had not imposed controls.

NCCI noted in its report that there may be several reasons for a doctor to dispense a drug directly to his or her patients, including that:

- The doctor wants the patient to begin taking the drug immediately and dispenses enough medication to last until the patient can get to a pharmacy.
- The doctor can't be certain what the right medication or dosage should be and dispenses a few days' supply of medication to determine whether the treatment is effective.
- The patient may have difficulty getting to a pharmacy.

Continued, Page 15

- The doctor wants to increase revenue by retaining some of the business he or she otherwise would send to pharmacies.

The NCCI study also noted that the unit cost of physician-dispensed drugs is often higher than the cost per unit of the same drug dispensed by a pharmacy. Factors contributing to lower per-unit costs for drugs supplied by pharmacies include:

- Overall economies of scale.
- Dispensing larger quantities of drugs in each transaction.
- Use of a pharmacy benefit manager's services to negotiate lower prices from manufacturers.
- Using formularies to increase use of generics and other less expensive, but therapeutically equivalent, drugs.
- Providing management reports detailing provider prescribing patterns and drug usage by injured workers.

A previous NCCI study found that the share of workers' compensation prescription drug costs associated with physician dispensing, "which had been very stable," increased "dramatically" in 2008 and rose again in 2009.

Meanwhile, states are looking for ways to control the cost of repackaged drugs. In 2007, California approved capping the price of repackaged drugs based on the Medi-Cal schedule. South Carolina approved price caps on repackaged drugs under a new pharmacy fee schedule in December, and Florida legislators have proposed legislation intended to curb the cost of such drugs.

NCOIL committee members likely will be looking at those efforts when they meet next month. Arkansas State Rep. Barry Hyde, D-North Little Rock, who chairs the committee, told WorkCompCentral that the panel is "just beginning our conversation" about the drug-repackaging issue. The NCOIL staff is gathering information on what has been done in different states on the issue, Hyde reported. "If we see a need, and there definitely seems to be a need, we will work on creating a model bill for legislators to consider," Hyde said. "First, we need to look at existing legislation," he added.

Impact from Aging Workers Less Than Expected

The impact of baby boomers who remain in the workforce past retirement age is less than expected on workers' compensation frequency and severity, the National Council on Compensation Insurance (NCCI) said on Wednesday. The Boca Raton, Fla.-based rate maker noted there is widespread concern over the impact of an aging workforce. NCCI said in a press release the results of its latest report are both "surprising and reassuring." NCCI found:

- Measured by loss costs per worker, the major difference among age groups occurred between workers between the ages of 25 to 34 and those between the ages of 35 to 44. All workers between the ages of 35 to 64 appear to have similar losses. –
- Differences in claims frequency compared by age have virtually disappeared.
- Older workers tend to have more rotator-cuff and knee injuries, while younger workers have more back and ankle sprains.
- Higher claims costs for older workers are driven by higher wages.

NCCI said workers ages 45 and older account for an increasing share of the nation's workforce. The share of workers aged 55 to 64 has been growing steadily, NCCI said, while workers between the ages of 45 and 54 have seen a modest increase. By comparison, workers 65 and older accounted for 3% of the workforce in 2000 and still less than 5% in 2010. The share of workers 45 and older jumped from 34% in 2000 to 42% in 2010. NCCI also concluded the change in the types of jobs held by younger workers had little impact on injury rates. "Changes in occupational mix have not had a material impact on the narrowing of frequency across age cohorts," NCCI concluded. "Occupational mix may have changed, but all occupations are much safer."

The Foregoing two articles were 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.

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.

NAME: _____ DATE: ____/____/____

OFFICIAL TITLE: _____

Organization: _____

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YEAR FIRST APPOINTED OR ELECTED? _____

CURRENT TERM EXPIRES: _____

HOW DID YOU LEARN ABOUT NAWCJ? _____

DESCRIPTION OF JOB DUTIES / QUALIFICATIONS FOR MEMBERSHIP:

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

Mail your application and check to: Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fzwiweb.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: ____/____/____

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Judiciary College 2012

The marketplace of programs, conferences and seminars seems never ending. We are bombarded with opportunities, but the NAWCJ Judiciary College is unique. This is a program produced by workers' compensation adjudicators, for adjudicators. The Subject matter is specifically selected to enhance the ability to perform what is undoubtedly one of the most difficult and yet underappreciated vocations in the country. This year, the program includes three exceptional, nationally-recognized speakers bringing an unprecedented depth to our program. Professor Terrell from Emory will present judicial writing, Professor Ehrhardt will present evidence, and Susan Constantine will present credibility determinations. In addition, this program brings medical knowledge with Dr. McClusky, Dr. David Dietz, and includes a live surgery. The opportunity to learn more about other states and their similarities and differences is facilitated by our comparative law panel program, and enhanced by the many opportunities to interact with peers from around the country socially and informally. The variety of jurisdictions, perspectives and people involved in the various sessions and roundtables is extraordinary. Notably, the registration fee for this event is among the lowest in the marketplace, and provides and almost unbelievable value. This program is held within the National Workers' Compensation Educational Conference. This overall event attracts in excess of eight thousand workers' compensation professionals annually and is among the largest in the country. The NAWCJ Board and Curriculum Committee invite you to Orlando next August, and we look forward to seeing you then.

NAWCJ Judiciary College 2012!

August 19 through 22, 2012, in Orlando, Florida

Sunday, August 19, 2012

2:30 PM – 5:00 PM

E. Earle Zehmer Moot Court Competition, Preliminary Rounds

Celebrating 25 years in 2012, the E. Earle Zehmer Competition will include sixteen teams. The competition is co-sponsored by the NAWCJ and the preliminary rounds are judged by members of the NAWCJ. The final rounds on Monday are judged by a panel of the Florida First District Court of Appeal. The competition is outstanding, the participants are exceptional, and this opportunity to contribute to the student's development is both exciting and gratifying.

Monday, August 20, 2012

9:00 AM - 11:50 AM

EFFECTIVE JUDICIAL WRITING (150 MINUTES, 3 CREDIT HOURS)

Honorable Sheral Kellar, Louisiana, introduction of speakers

Professor Timothy Terrel

Atlanta, GA

Emory University

The ability to write well, with clarity, is critical in the legal profession. Judicial writing is unique though. Adjudicator clarity is critical to the lawyers' and parties' clear understanding of both the trial outcome and the reasons for it. Effective judicial writing is a service to the parties, and facilitates an effective appellate review process. Professor Terrel is a nationally-recognized expert in judicial writing, and brings his wealth of knowledge back to the NAWCJ in 2012.

11:50 AM - 12:00 PM

BREAK AND TRANSITION TO GRAND BALLROOM 4

12:00 PM - 12:30 PM

WELCOME LUNCH (PROVIDED)

Honorable Ellen Lorenzen, NAWCJ President, welcoming remarks

12:30 PM - 1:45 PM

MULTI-JURISDICTION COMPARATIVE LAW PANEL (75 MINUTES, 1.5 CREDIT HOURS)

Moderator,

Honorable Jennifer Hopens

Austin, TX

Texas Department of Insurance, Division of Worker's Compensation

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.

12:30 PM - 1:45 PM

MULTI-JURISDICTION COMPARATIVE LAW PANEL (CONT.)

Speakers,

Honorable Michael Alvey
Frankfort, KY
Kentucky Workers' Compensation Commission

Honorable Melba Dixon
Jackson, MS
Mississippi Workers' Compensation Commission

Honorable Sylvia Medina Shore
Miami, Florida
Florida Office of Judges of Compensation Claims

Honorable James Szablewicz
Richmond, Virginia
Virginia Workers' Compensation Commission

1:45 PM - 2:00 PM

BREAK AND TRANSITION TO GRAND BALLROOM 1.

2:00 PM - 2:50 PM

HOW DO CARRIER POLICIES AFFECT THE DENIAL DECISION? (50 MINUTES, 1 CREDIT HOUR)

Honorable Steven Farrow, Georgia, introduction of speakers

Speakers:

David Dietz, M.D.
Liberty Mutual Insurance
Boston, MA

Rob Bonner, M.D.
The Hartford
Northbrook, IL

Workers' Compensation adjudicators are called upon to decide an astoundingly diverse population of disputes. Many of these are either about medical issues, such as treatment authorization, or are dependent upon medical issues, such as entitlement to temporary indemnity. Many disputes are therefore framed by medical decisions made by insurance carriers, in providing care of a certain description or in denying care. This panel of insurance carrier medical directors, representing a vast percentage of the national market, will discuss how and why their companies make these medical decisions which ultimately often end in litigation.

Monday, August 20, 2012, Cont.

2:50 PM - 3:00 PM

BREAK

2:00 PM - 2:50 PM

DETERMINING CREDIBILITY OF MEDICAL OPINIONS (50 MINUTES, 1 CREDIT HOUR)

Honorable James Szablewicz, Virginia, introduction of speakers

Moderator:

Nat Levine

Broward Orthopedic Specialists

Ft. Lauderdale, FL

Speaker:

James McCluskey, M.D., MPH, PhD.

University of South Florida

Tampa, FL

Adjudicator's decisions are often founded upon the expert opinions of physicians. Issues of compensability, the need for specific medical care, and entitlement to indemnity benefits usually hinges upon the conflicting opinions of various experts. How does an adjudicator determine the credibility of those opinions, particularly when they are presented by deposition or affidavit, and the expert is not present in trial to be observed and assessed through the course of rendering those opinions? Dr. McClusky will provide methods for analyzing the experts' medical records and the other expert opinions to make these critical credibility determinations.

2:50 PM - 3:00 PM

BREAK

3:00 PM - 4:50 PM

EVIDENCE FOR ADJUDICATORS (100 MINUTES, 2 CREDIT HOUR)

Honorable John J. Lazzara, Florida, introduction of speaker

Professor Charles Ehrhardt

Florida State University

Tallahassee, FL

Workers' Compensation adjudicators across the country are bound by evidence codes to varying degrees, sometimes depending upon the type of hearing they are then presiding over. Professor Ehrhardt brings over forty years of experience teaching evidence. This program will provide insight into specific challenges of trial evidence, effective consideration of and ruling upon evidentiary objections, and interpretation of specific evidentiary issues common to evidence codes.

4:50 PM - 5:00 PM

BREAK

5:00 PM - 5:30 PM

NAWCJ ANNUAL BUSINESS MEETING

7:00 PM - 11:00 PM

RECEPTION AND ENTERTAINMENT

8:45 AM - 9:45 AM **LIVE SURGERY (60 MINUTES, 1 CREDIT HOUR)**

Moderator:

Randy Schwartzberg, M.D.

From Orlando Orthopaedic Center, Orlando, FL

Surgeon

Steven E. Weber, D.O.

From Orlando Orthopaedic Center, Orlando, FL

Don't miss the opportunity to observe a renowned and highly respected surgeon in both the medical and sports communities Dr. Randy Schwartzberg, perform this year's **LIVE SURGERY**...an Arthroscopic Dr. Randy Schwartzberg is board certified in orthopaedic surgery, fellowship trained and board certified in sports medicine and specializes in knee and shoulder injuries. ACL Reconstruction! Dr. Steven Weber, a fellow orthopaedic surgeon at Orlando Orthopaedic Center will be moderating this event.

10:00 AM - 11:50 AM **TO TELL THE TRUTH (100 MINUTES, 2 CREDIT HOURS)**

Honorable David Imahara, Georgia, introduction of speaker

Speaker:

Susan Constantine – As seen on CNN, MSNBC, ACB, CBS, and HLN.

Orlando, FL

Adjudicators are constantly called upon to make credibility determinations. Susan Constantine is an expert in reading people, with extensive training and experience in understanding the evaluation of truthfulness. Susan has consulted for major news outlets in conjunction with their reporting and evaluating testimony in high profile cases. This program will bring the old game show "To Tell The Truth" to the stage with three live panelists, each claiming to be the same person. The moderator will question the panelists in an attempt to glean the truth, and Susan will instruct the audience on the signs and indicators that she perceives as they respond. The audience will vote for whom they believe is telling the truth and then "the real" person will stand up!

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

12:00 PM -1:00 PM **FLORIDA BAR WORKERS' COMPENSATION SECTION JUDICIAL LUNCHEON (GRAND BALLROOM 4)**

The Workers' Compensation Section of The Florida Bar hosts this annual luncheon. The event is focused on building bridges between the litigators and the adjudicators. Since 2009, the Section has graciously welcomed all NAWCJ attendees to this event, providing an exceptional opportunity for establishing collegiality and maintaining professionalism.

1:00 PM - 1:10 PM **BREAK**

Tuesday August 21, 2012, Cont.

1:10 PM – 2:00 PM

KEEPING THE CASE ON TRACK TO TRIAL (50 MINUTES, 1 CREDIT HOUR)

Honorable Melodie Belcher, Georgia, introduction of speakers

Honorable Melissa Jones

Washington, D.C.

District of Columbia Department of Employment Services

Keeping a case on track can be a challenge, particularly with unrepresented litigants. Adjudicators can and should provide leadership throughout the litigation process, to assist the parties in navigating the process to reach the trial. Judge Jones will provide insight and tips on utilizing the pretrial process to move the case to trial and to assure the due process and fair hearing rights of the parties.

2:00 PM - 5:00 PM

ROUNDTABLE BREAKOUTS

2:00 - 2:50

CHOICE OF “INTRO TO SOCIAL MEDIA” OR “APPELLATE REVIEW OVERVIEW”

INTRO TO SOCIAL MEDIA

Honorable David Torrey, Pennsylvania, introduction of speakers

Elizabeth Rissman

Orlando, FL

William Wieland, Esq.

Orlando, FL

Social media is pervasive in American society and its influence seems to expand every day. Facebook, LinkedIn, Twitter, and others consume hours and days of peoples' lives. Judges need to understand what social media is and why people are engaged in it. Elizabeth Rissman will bring that introduction to the subject. The Judge's interest may then turn to how social media interaction will come before the bench, as evidence, and as admissions against interest. William Wieland will provide this “so what” of social media.

APPELLATE REVIEW OVERVIEW

Honorable Robert Cohen, Florida, introduction of speakers

Honorable Michael Alvey

Frankfort, KY

Honorable Nikki Clark

Tallahassee, FL

APPELLATE REVIEW OVERVIEW (CONT.)

Honorable Melissa Jones
Washington, D.C.

Honorable Richard Thompson,
Atlanta, GA

How does the appellate process works in a various jurisdictions? What suggestions do appellate judges have for drafting an effective order? How does the collegial groups/panels/commission process differ from the trial judge process? How do appellate judges divide appellate workload and produce decisions? These insights and more will be discussed by our distinguished panel and the attendees. This is a must-attend for any trial adjudicator.

2:50 - 3:00

BREAK

3:00 - 3:50

CHOICE OF "APPELLATE REVIEW OVERVIEW" OR "JUDICIAL TECHNOLOGY"

APPELLATE REVIEW OVERVIEW

Honorable Robert Cohen, Florida, introduction of speakers

Repeat of 2:00 Roundtable, see above.

JUDICIAL TECHNOLOGY

Honorable Karl Aumann, Maryland, introduction of speakers

Honorable Steven Rosen
St. Petersburg, FL

Electronic filing, paperless offices, videoteleconference, dictation software, electronic calendars and reminders, smartphones, and more have invaded the process of adjudication and the practice of law. Judge Rosen will lead a roundtable discussion about how States are leveraging technology to deliver customer service to their citizens in an ever challenging budgetary environment.

4:00 PM – 4:50 PM

CHOICE OF "JUDICIAL TECHNOLOGY" OR "INTRO TO SOCIAL MEDIA"

JUDICIAL TECHNOLOGY

Honorable Karl Aumann, Maryland, introduction of speakers

Repeat of 3:00 Roundtable, see above.

Tuesday, August 21, 2012, Continued

INTRO TO SOCIAL MEDIA

Honorable David Torrey, Pennsylvania, introduction of speakers

Repeat of 2:00 Roundtable, see above.

5:15 PM - 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

Registration for the NAWCJ entitles attendees to participate in any combination of three programs conducted on Wednesday. These include a full day mediation program, a full day Multi-State Program and a full-day Medicare Set Aside Program. Details on these schedules will be forthcoming in future editions.

We Will See You There!

The National Association of Workers' Compensation Judiciary, August 19-22, 2011

Marriott World Center, Orlando



NAWCJ Judiciary College 2012 Faculty

Honorable Mike Alvey – Chair Kentucky Workers’ Compensation Commission

Chairman Michael W. Alvey received his Bachelor’s degree from Western Kentucky University, and his J.D. from the University of Kentucky College of Law. Admitted to the Kentucky Bar in 1988, Chairman Alvey practiced primarily defending workers’ compensation, federal black lung and personal injury claims. On November 13, 2009 Chairman Alvey was appointed to serve as Chairman of the Kentucky Workers’ Compensation Board effective January 5, 2010. Chairman Alvey was recently appointed to the board of directors of the National Association of Workers’ Compensation Judiciary, Inc.

Chairman Alvey retired from the Kentucky Army National Guard in 2000 where he served nearly 21 years as an armor officer and is a graduate of the Armor Officer Basic Course and Armor Office Advanced Course.

Chairman Alvey resides in Owensboro, Kentucky where he has been involved in various church and civic activities as well as working with youth sports including both coaching and officiating.



Honorable Nikki Clark

Judge Clark serves on the Florida First District Court of Appeal. She was appointed by Governor Charlie Crist in 2009. She previously served on the Circuit Judge, Second Judicial Circuit of Florida, 1993 – 2009. She presided in Felony, Civil, Family, and Juvenile Divisions, 1993 - 2009; Administrative Judge, Family Law Division, 2005 – 2009; Designed and implemented Independent Living Court to address needs of foster children after age 18; Designed and implemented Unified Family Court for management of families’ cases in multiple Divisions.

Judge Clark served as a Chief Cabinet Aide, Office of the Governor, 1993; Legislation and Policy Development Director, Florida Department of Environmental Regulation, 1991 – 1993; Assistant Attorney General, Office of the Florida Attorney General, 1981 – 1991; Attorney, Legal Services of North Florida, 1979 - 1981.

She received her Juris Doctorate from Florida State University College of Law in 1977 and her Bachelor of Arts from Wayne State University in 1974. Judge Clark is an instructor, Continuing Legal Education Courses on mortgage foreclosure, ethics, procedures for high-profile cases, and creation of the trial record, 1995 – present. She serve as the Committee Chair, Florida Supreme Court Committee on Families & Children in the Court, 2006 – present. Judge Clark was an Adjunct Professor of Trial Practice, Florida State University College of Law, 1998 – 2009. She served as a Foreign Elections Consultant in Nigeria and Liberia, 2005 – 2008, and was a member of the Florida Supreme Court Committee on Fairness & Diversity, 2004 – 2006.

Judge Clark is a member of the William H. Stafford Inn of Court, the Tallahassee Women Lawyers Association, the Tallahassee Barristers Association, and is a former member of the Florida Conference of Circuit Judges.

She is the recipient of the Florida Supreme Court Chief Justice’s Distinguished Judicial Service Award, 2010, the Rosa L. Parks Servant Leadership Award, (Florida State University), the Rosemary Barkett Outstanding Achievement Award, 2009 (Tallahassee Women Lawyers); the Sojourner Truth Award (National Coalition of 100 Black Women), the Judge of the Year (Florida Law Related Education Association), the Administration of Justice Award, Florida (American Board of Trial Advocacy); Distinguished Service Award (Florida Council on Crime & Delinquency), the Children’s Advocate Award (Legal Services of North Florida), and the Judicial Appreciation Award (Florida Conference of Circuit Judges).



Susan Constantine

Susan Constantine is a leading body language expert / Jury Consultant / Florida Supreme Court County Mediator and President of Silent Messages. She has appeared on CNN, MSNBC, ACB, CBS, and HLN. Susan Constantine established herself as a leading body language expert, renowned speaker and trainer specializing in “deception detection” through verbal and non-verbal communication. She conducts seminars and workshops for corporate clients, lawyers, investigators, government agencies, and individuals sharing her body language expertise in easy to grasp formats. Her expertise focuses on understanding and predicting human behavior thru the hidden “Secrets of Reading Body Language.”



Susan’s refined body language skills have allowed her to serve as a Jury Consultant and trainer for Jury Quest LLC, and a core trainer for the south east region of the U.S. for Analytic Interviewing. As a Florida jury consultant, she provides scientific jury selection (objective) and reading people (subjective) during Voir Dire including witness preparation in high profile cases in Florida. Additionally, she conducts CLE, CME, CJE and CEU training programs for lawyers, mediators and diverse business sectors in Florida and is an approved trainer by the Ekman Group and Humintell teaching The (7) Universal Facial Expressions as seen on hit series “Lie to Me.”

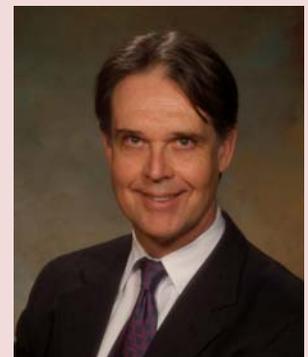
Susan is a regular contributor on *CNN “In Session” Court TV*. She has been featured numerous times in trade journals, newspapers, and television. Quoted expert in Orlando Sentinel, Miami Herald and the New York Times Journal and appears frequently on *Fox 35, Fox News, and WESH channel 2, as well as channel 6, 9 and 13* and several local/national news. Susan analyzes the body language, word content, and voice tone of witnesses, suspects, presidential debates and various subjects related to reading people’s body language.

In 2008, she became a Supreme Court County Mediator in the State of Florida in dispute resolution and volunteers her time for the Orange County Courts in the Ninth District. Sharing her conflict resolution experience and professional/personal life experiences, her communication skills have gained the interest of Fortune 500 companies and small business owners. Thereby, teaching sales executives, managers, sales professionals and CEO’s how to overcome adversity by developing excellent communication skills in the workplace through the “The Four Secret Languages of Communication”. Additionally, as leading body language expert, Susan provides training seminars on how to read and interpret body language, deception detection, voice and content analysis during negotiations, sales prospecting and investigations.

Though the development of these customized body language training programs, participants will be equipped to make better judgments. These body language skills aid in assessing credibility, truth and deceptive behavior in the field. Research has proven that verbal and nonverbal cues can reveal one’s true intentions. This research is scientifically validated and has been implemented by the FBI, CIA, homeland security and other governmental agencies to heighten the subjective skills of its investigators, judges, attorneys, social workers in reading the true intention of others’ hidden

David Dietz, M.D.

Dr. David Deitz is responsible for medical review operations and medical policy for Liberty Mutual’s workers compensation business nationwide. A graduate of the University of Miami School of Medicine, Dr. Deitz completed post-graduate training at Miami and Harvard Medical School, and has over 25 years experience in managed medical care, guidelines development, healthcare outcomes evaluation and reporting, and utilization management systems in both workers compensation and group health. He is board-certified in Internal Medicine and has practiced both Emergency and Internal Medicine. Prior to joining Liberty Mutual, he worked in the private sector overseeing content development of managed care software and reporting systems that were successfully deployed at many group health and workers’ compensation insurers.



Dr. Deitz has sought to make Liberty Mutual a leader in promoting best medical practices and high quality care for injured workers; he and his staff have worked with employers, labor, state regulators and lawmakers in over 20 states on reform efforts, and have served on a number of task forces and committees nationwide.

Honorable Melba Dixon

Judge Melba Dixon graduated from Linwood Elementary School and Benton High School (valedictorian) in Yazoo County, Mississippi. She has a Bachelor of Arts degree (Magna cum Laude) in Economics with a minor in Business Administration from Tougaloo College, an MBA degree from Jackson State University, and a Juris Doctorate from Mississippi College School of Law. She has also completed course work at the National Judicial College in Reno, Nevada.

Judge Dixon currently serves as one of eight administrative law judges with the Mississippi Workers' Compensation Commission. She is the first African American female to serve in this capacity. Prior to joining the Commission in 1997, she served as Special Assistant Attorney General with the Office of the Attorney General for the State of Mississippi. She served as key advisor to the State Personnel Board and state government agencies in the area of labor and employment law. She has also worked as a staff attorney for Central Mississippi Legal Services, where she provided comprehensive legal services to indigent clients in civil cases. She was employed in the area of Personnel and Human Resource Management with the Mississippi State Personnel Board and the Mississippi Library Commission for approximately ten (10) years prior to entering the legal profession.

Judge Dixon is a member of the Mississippi Bar, the Magnolia Bar Association, the Capital Area Bar Association, and the Mississippi Women Lawyers' Association. She is also a member of Beta Delta Omega Chapter of Alpha Kappa Alpha Sorority Inc., a local / international community service organization. She formerly served as Secretary / Treasurer for the Association of State Personnel Administrators, was on the Board of Directors of the Mississippi Association of State Personnel Administrators, and was a member of the Charles Clark Inn of Court. She has also served on the Board of Directors of the Middle Mississippi Girl Scout Council. Judge Dixon is among those featured in *The 2010 Inaugural Edition of Who's Who in Black Mississippi*.

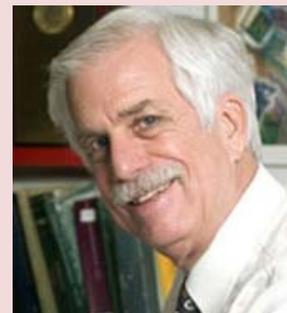


Professor Charles Ehrhardt – Florida State University

Author of Florida Evidence (West 2011), the leading treatise on the topic, and Florida Trial Objections (West 4th ed. 2007), Professor Ehrhardt has been cited as an authority by appellate courts more than 500 times. He taught Torts, Evidence, Trial Practice and Trial Evidence Seminar, and was named Outstanding Professor seven times. After serving as the Ladd Professor of Evidence for 35 years, he earned emeritus status in 2007. He continues to teach Evidence at the law school.

Professor Ehrhardt served as a commissioner to the National Conference of Commissioners on Uniform State Laws from 1996-2005. He was a member of the faculties of both the National Judicial College in Reno, Nevada, and the Federal Judicial Center in Washington, D.C. He has been a visiting professor at University of Georgia and Wake Forest. Professor Ehrhardt received the Selig I. Goldin Award from the Criminal Law Section of The Florida Bar and the President's Award from the Florida Board of Trial Advocates. He clerked for the Honorable M.D. Oosterhout of the U.S. Court of Appeals for the Eighth Circuit and joined Florida State University College of Law's faculty in 1967.

For almost 20 years, he served as the university's representative to the NCAA and the ACC. In 2007, he was inducted into the Florida State Sports Hall of Fame. Education: J.D., University of Iowa, 1964; B.S., Iowa State University, 1962.



Honorable Jennifer Hopens - Texas

Jennifer Hopens received her undergraduate and law degrees from the University of Texas at Austin. She was licensed to practice law in Texas in 2002. In 2007, she joined the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) as a Hearing Officer. She has traveled extensively for the Division, holding contested case hearings in workers' compensation matters in the Austin, Beaumont, Bryan/College Station, Corpus Christi, Dallas, Fort Worth, Lufkin, Missouri City, Houston East, Houston West, San Antonio, Uvalde, Victoria, and El Paso Field Offices of TDI-DWC. She attended the Judicial College of the National Association of Workers' Compensation Judiciary (NAWCJ) in Orlando, Florida in 2009, 2010, and 2011. In 2010, she was chosen to serve on the NAWCJ Board of Directors. She was previously a Hearing Officer for the Texas Workforce Commission. In her free time, Jennifer enjoys reading, traveling, genealogy, and photography.



Honorable Melissa Jones – District of Columbia

Melissa Jones is an Administrative Appeals Judge with the Government of the District of Columbia, Department of Employment Services (DOES). She formerly served as an administrative law judge presiding over workers' compensation claims between 2006 and 2010. Prior to joining the DOES, she practiced workers' compensation defense both in private practice and as staff counsel at The Hartford. Her legal experience also includes acquisitions and real estate litigation.

Judge Jones is a graduate of St. Bonaventure University, where she authored a thesis on "The Influence of Modern Technology on the Right to Refuse Medical Treatment: The Nancy Cruzan Case." She received her Juris Doctor at the University of Buffalo School of Law in 1994.

Judge Jones serves on the faculty of the National Judicial College in Nevada, and has lectured as an adjunct professor at the University of Maryland University College. She has also lectured for National Business Institute and at the National Association of Administrative Law Judiciary.



James McCluskey, M.D. – University of South Florida

Dr. James McCluskey is a Board Certified Occupational Medicine Physician and a PhD-trained Toxicologist. He is the Medical Director of the Center for Environmental/Occupational Risk Analysis and Management at the University of South Florida, Tampa, Florida. In addition, he is an assistant professor at the USF College of Medicine in the Department of Internal Medicine, and a research assistant professor at the USF College of Public Health in the Department of Environmental and Occupational Health. Dr. McCluskey completed an advanced subspecialty residency in Occupational Medicine in which the program curriculum and clinical experiences were extensively weighted towards the recognition and evaluation of complex occupation-related diseases. In addition, he has a PhD in Toxicology and Risk Assessment. Dr. McCluskey is actively involved with a research team investigating the human health effects of chemical exposure(s). His publications include articles on chemical exposures and various pulmonary conditions, as well as co-authorship of a chapter on occupational asthma. He is a frequent lecturer for public, private and academic groups. His medical practice is focused on the evaluation of medical cases involving environmental/occupational chemical, respiratory, infectious and allergen exposures.



Honorable Sylvia Medina-Shore

Judge Medina-Shore began her legal career as in-house counsel for the Florida Department of Insurance Insolvency Division. After serving one year as in-house counsel, Judge Medina-Shore joined the law firm of Almeyda & Hill and represented injured workers, employers and insurance carriers in workers' compensation and health insurance cases. Judge Medina-Shore was an associate and partner of same Miami law firm for 5 years. For the following 5 years, Judge Medina-Shore worked at the law firm of Conroy, Simberg, Ganon & Abel in West Palm Beach, Florida representing employer and insurance carriers.

In March of 2000, Governor Bush appointed Judge Medina-Shore to the Miami-Dade and Monroe County District. She was re-appointed by Governor Bush in March of 2004 and by Governor Crist on 2008. To that extent, Judge Medina-Shore has volunteered to accept college and law school students as interns for numerous Miami-Dade County and Broward colleges. For the past four years, Judge Medina-Shore has served in the executive committee of the Conference of Judges of Workers' Compensation. In March of 2006, Judge Medina-Shore was named Administrative Judge for the Miami- Dade and Monroe Counties. Judge Medina-Shore has lectured at numerous workers' compensation seminars and Miami-Dade County bench and bar conferences.



Elizabeth Rissman

Elizabeth is the Director of Social Media at Blueorb, Inc. in Orlando, Florida. She provides leadership and development strategies for companies with the goal of increasing brand exposure, customer acquisition, and sales. This involves creating and maintaining social media platforms with intriguing content, using platforms such as Facebook advertising campaigns and page promotion, blog posts, video blogs, LinkedIn updates, and Twitter engagement. Ms. Rissman provides business entities with expertise on developing and deploying web content, optimizing search engine recognition, and maximizing the exposure and advertising benefits of the vast array of Internet options including social media, e-mail, and web presence. Her responsibilities include composing and editing diverse forms of internal and external communication, including email campaigns, cover letters, press releases, and other forms of correspondence as an integrated effort with social media. She attends industry events to discuss social media and market promotion. She has previously worked in the media as a radio host, staff writer and copywriter. Elizabeth earned her Bachelor of Arts in Communication Studies from Vanderbilt University in 2007.



Honorable Steve Rosen

Since being admitted to the Florida Bar in 1974, Judge Rosen has spent his entire legal career in the area of workers' compensation law. He began his practice in the Tampa office of Marlow, Mitzel & Ortmyer and will leave Stephen L. Rosen, P.A. to serve his term as Judge of Compensation Claims. He has represented insurance carriers in the past, but since 1976 has represented the rights of injured and uninsured employer. Judge Rosen was a member of the initial Florida Bar Workers' Compensation Board Certification Committee, and has been Chair of The Florida Bar Workers' Compensation Section. From 1990 to 1993, he had the honor of acting as Chair of the Statewide Judicial Nominating Committee for Judges of Compensation Claims. He is also a founding member of the Florida Workers Advocates. In 2005, Judge Rosen was honored to have been nominated to the Governor for the position of Deputy Chief Judge for workers compensation. He has been a frequent lecturer and author on workers' compensation issues. He has appeared before the Florida legislature to propose amendments to the workers' compensation laws and has served on legislative advisory committees. He been continuously listed in The Best Lawyers in America since 1995, "AV" rated by Martindale-Hubbell, "Superlawyers" in Florida since 2005, and is the recipient of the W. L. "Bud" Adams Award for excellence in the field of workers' compensation, 1991.



Honorable James Szablewicz – Virginia

Jim Szablewicz is the Chief Deputy Commissioner of the Virginia Workers' Compensation Commission and has been in that position since April 2004. In this capacity, he supervises the Judicial Division of the Commission, including the functions of the Commission's Clerk's Office, six Regional Offices and all of the Deputy Commissioners state-wide. Prior to becoming Chief Deputy Commissioner, Jim served as a Deputy Commissioner for two years, and was engaged in the private practice of law on Virginia's Eastern Shore for eleven years, primarily representing injured workers. Jim received his B.A. in Political Science from Yale University in 1984 and his J.D. from the University of Virginia School of Law in 1987.

Professor Timothy Terrell – Emory University

Timothy P. Terrell, a former Fulbright Scholar, received another Fulbright grant-in-aid for scholarly research and teaching in England. Before coming to Emory, he practiced with the Atlanta law firm of Kilpatrick & Cody. His works include "Rethinking Professionalism" and "When Duty Calls" both published in the Emory Law Journal (1992); *Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing* (Clark Boardman Company, 1992); "Transsovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice," *Fordham International Law Journal* (1994); "A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students," *Washburn Law Journal* (1994); "Ethics with an Attitude," *Law and Contemporary Problems* (1996); "Professionalism as Trust: The Unique Internal Legal Role of the Corporate General Counsel," *Emory Law Journal* (1997) and several articles on legal writing and editing for West Publishing Company's *Perspective* periodical.

Professor Terrell has organized conferences on topics such as "Rethinking Liberalism" and "Human Rights and Human Wrongs: Investigating the Jurisprudential Foundations for a Right to Violence." He is director of the Hugh M. Dorsey Jr. Fund for Professionalism and also has been active in continuing legal education for practicing lawyers, presenting programs around the country for the American Law Institute and the National Practice Institute on legal writing and legal ethics. He served part-time as the director of professional development for the Atlanta law firm of King & Spalding, assisting that firm in developing its associate training program. He also helped produce two videotape-based educational programs on legal ethics, one for prosecutors and criminal defense lawyers, the other involving representation of clients in the healthcare industry.

Education: BA, University of Maryland, 1971; JD, Yale University, 1974; Diploma in Law, Oxford University, 1980.



Honorable Richard Thompson - Chair Georgia Workers' Compensation Commission

Richard Thompson is the Chair of the Georgia State Board of Workers' Compensation in Atlanta, Georgia. He and his fellow Commissioners act as the appellate review body for the decisions of Georgia's workers compensation administrative law judges. He earned his Bachelor of Arts in Business and his Juris Doctor from Mercer University. Chair Thompson has worked in private practice and as an Assistant District Attorney, an Assistant Attorney General, and a workers' compensation Administrative Law Judge. Chair Thompson has also served as the United States Attorney for the Southern District of Georgia. He has been involved with the Southern Association of Workers' Compensation Administrators (SAWCA) and the National Association of Workers' Compensation Judiciary. He has lectured extensively on the subject of workers' compensation.



William Wieland

Billy received his Bachelor of Business Administration Magna Cum Laude with a minor in business law from Stetson University in 2007. Billy received his Juris Doctor Cum Laude from Stetson University College of Law in 2010 and was admitted to practice law in Florida in 2010. During law school, he worked as a research assistant coordinating the National Conference on Law and Higher Education and was a founding Member of the Defense Research Institute student chapter at Stetson University College of Law. He also served as clerk to the Honorable Circuit Judge Stan Strickland of the 9th Circuit Court in Orange County, Florida. Billy was fortunate enough to be published in the Florida Bar Workers' Compensation Section: News and 440 Report in 2010. Billy volunteers at the Orange County Teen Court as a Jury Advisor and Bailiff supervising and supporting at risk teens.



Steven E. Weber, D.O.

Board Certified in orthopaedic surgery, specializing in adult spinal reconstruction cervical and lumbar spine surgery. A native of Michigan, Dr. Weber attended the University of Michigan in Ann Arbor, MI, where he received a B.S. degree in Biology. He earned his medical degree from Michigan State University, College of Osteopathic Medicine in East Lansing, MI. He remained there to complete his internship and Orthopaedic Residency at Michigan State University.

Following his residency, Dr. Weber completed a Reconstructive Spinal Surgery Fellowship with the University of Florida, in Gainesville, Florida. He has been published within the field of Orthopaedics and has presented his research at several national Orthopaedic meetings, including the American Osteopathic Academy of Orthopaedics. Dr. Weber specializes in Spinal Reconstruction and General Orthopaedic Surgery.



Randy S. Schwartzberg, M.D.

Board Certified in Orthopaedic Surgery and Board Certified in Sports Medicine. After growing up in South Florida, Dr. Schwartzberg attended the University of Michigan for his undergraduate education. He earned his medical degree from the University of Florida College of Medicine. After medical school, Dr. Schwartzberg completed his orthopaedic surgery residency in Orlando.

Following his residency program, Dr. Schwartzberg pursued his subspecialty interests in sports medicine and engaged in sports medicine training at the esteemed American Sports Medicine Institute in Birmingham, Alabama. His extensive training served as a strong platform to infuse his sports medicine enthusiasm and skills into the Central Florida area.

