

# *Lex and Verum*



## The National Association of Workers' Compensation Judiciary

Number XL, December 2012

### Thoughts from the NAWCJ President

By Ellen Lorenzen  
NAWCJ President

Many years ago I left a board meeting for a few moments and came back to find I had been elected the incoming president of the board of my synagogue, leading to the development of a guiding principle of my life: never drink more than a few ounces of any fluid before a board meeting starts. Actually I was happy to serve and more than a little flattered. One of the duties that the president of a synagogue board has is to attend Saturday B'nai Mitzvot. In case you have never attended one, a Bar or Bat Mitzvah is a standard Saturday morning Jewish worship service led by a 12 year old girl or a 13 year old boy with many adoring family members and giggling school friends in attendance, as well as a Rabbi and board president. The Rabbi's job is to jump start the Bar/Bat Mitzvah child when (s)he cannot remember the Hebrew. The president's job is to present a gift from the congregation, usually an inspirational book. Before the president presents the book, however, the child has an opportunity to read from the Bible in Hebrew and then give a short speech. The speech is supposed to be a discussion of the Bible portion the child has just read. As you can imagine, some "tweens" are imaginative, creative, articulate speakers; some are not. Over a period of two years, I faithfully sat in front of the congregation every Saturday and listened to speeches and so I can tell you they all had one common element: the "thank you" ending. In fact, the only speech I remember specifically was nothing but "thank you." Every relative, every friend, every religious school teacher, every regular school teacher, the caterer, the Rabbi, the cantor, the Synagogue secretary, the janitor and even the congregation's president got thanked, again and again and again.

I was reminded of this experience because this will be my last President's column and I would be remiss if I did not thank my Board members and if I did not say so to Judges Langham, Lazarra, Belcher, Alvey, Aumann, Cohen, Imahara, Hawkes and Hoppens, and to Jim McConnaughay, Steve Coonrod, Steve Rissman, and Kathy Shelton and her staff. And thanks to all those others who I don't have space to mention, including my office staff who understood when I closed my door and said, "Don't bother me. I've got to write this column; Judge Langham needed it yesterday." And, most importantly, thanks to Judge Torrey who started off agreeing to be a Vice-President and suddenly found himself President-elect. I sincerely mean it when I thank them all. However, I fear I sound like a 13 year old boy on a Saturday morning and that would be a disservice to all those people who have helped me and supported me these last two years.

But I am thankful for these folks and for the opportunity to have served as president of this organization and I do not want to trivialize the effort that everyone affiliated with NAWCJ made by reducing it to a standard "Thank you" column. So I will just give you a summary of what the people I listed have been doing for me and you.

John Lazzara: John was the first president of NAWCJ. Before that, he spent many years as the education committee for the Florida judges informal "Judges Conference" and took the initiative in putting on programming when we in Florida would get together, typically two to three times a year. John served as my example for what I should be doing and how to do it. Thanks, John, for never complaining when I misspelled your name and I promise I will schedule a December executive committee meeting.

David Langham: the classic example of the person behind the scenes who does everything you ask him to do plus does all the things that need to be done before you even realize they need to be done. He puts together Lex & Verum each month, as well as two other newsletters that I know about and maybe more I do not know about. He does a credible job at writing a travel blog, at least about where to eat.

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Melodie Belcher: Melodie was the board secretary which, as you know if you have ever been the secretary of a board, means she had to attend every meeting of the board and executive committee, listen to what was said, and then write minutes about what was said and done, even when she was not working the day of the meeting. Thank you, Melodie, for being so prompt with the minutes.

Bob Cohen: Bob was our treasurer. He never complained to me about the state of our financial data even though I promised I would get him a real financial report (which I never did).

David Torrey: here are some things you should know about David Torrey. He can research and write a lot better than I can. He is incredibly organized. And he has a really great sense of humor; listen closely for it. He will be a great president.

Judges Alvey, Auman, Imahara, Hawkes, and Hopens: Mike, Karl, David, Paul and Jennifer were the rest of my board. They were always there when I needed them and served on every committee I created, providing input into NAWCJ policy. They also persuaded judges from their states to become members and come to our college.

Jim McConnaughay, Steve Coonrod, and Steve Rissman: these associate members were our friends and promoters. Jim and Steve R. and their organization WCI360 were our parents and our financial backers.

Kathy Shelton and her staff: Kathy and her staff do all the leg work in putting on the college. When you come to me with a problem at one of our sessions, Kathy is who I call to fix it. I would have no idea how to bargain with a hotel for rooms, meeting space and food. Kathy does. I can barely format the content of this column. Kathy has staff who could turn it into a beautiful four column brochure with an eye catching design. Kathy's group is the one who arranges CLE credits in 25 states so all you have to do is send the form in. You name it, Kathy will find someone who can do it.

The last people to thank are all of you who read this. And most especially, those of you who take the time to send me comments. I enjoyed my last two years as president. I plan to enjoy being immediate past president. I stand ready to help the incoming Board and officers because that is the best way I know to say thank-you to everyone who helped me.

Not as always, email me at [Ellen.Lorenzen@doah.state.fl.us](mailto:Ellen.Lorenzen@doah.state.fl.us) until 12/7/12 and, after that, at [Ellen.Lorenzen@doah.state.fl.us](mailto:Ellen.Lorenzen@doah.state.fl.us). And one last thing you should know, I am the person who was supposed to proof read Lex & Verum each month. So, if you have any complaints about misspellings or bad grammar, you had me to blame.

# Evaluating Judges

The quality of judges is a matter of discussion in various jurisdictions. This may be illustrated by some changes to the Michigan workers' compensation statute last year, Act number 266, Public Acts of 2011 (see page 8 of this issue).

The Duke Law Journal published an interesting article by Judge Harris Hart on evaluating Judges. Judge Hart notes that "Improving the quality of the judiciary is a noble cause." He critiques the efforts of social scientists to contribute to the goal of evaluation, and notes that their contributions "miss the mark; and that those measures, to the extent that they influence judges, could encourage bad practices."

Judge Hart proposes the following criteria.

## Treatment of Colleague

"A good judge treats colleagues fairly. If it is true that ninety percent of life is just showing up, then treatment of colleagues belongs in the other ten percent. Just showing up won't cut it."

## Treatment of Litigants

"The process of decision making must be fair, and appear to be fair, to the litigants."

## Treatment of Law

"The legal doctrine set forth in the court's opinion is almost always the most important consequence of the court's decision to society as a whole."

## Treatment of the Institution

"The authority of courts in this country is founded on the reputation of the judiciary." "The judge's work may well advance the reputation of the judge, but it should not do so at the expense of the courts themselves."

Judge Hart's categories above are more fully described in subcategories. His rationale is focused upon appellate judges, but his points are focused, insightful, and interesting. He presciently concludes that "as judges engage in conversation and introspection regarding quality, we will continue to improve the way we do our jobs"

This analysis is interesting and worthy of consideration by all adjudicators. The complete article, is available here:

<http://legalworkshop.org/2010/03/11/evaluating-judges>

# Lessons from Lawyers: Achieving Work-Life Balance

By Courtney A. Carrell, Esquire



When Anne-Marie Slaughter’s article, “Why Women Still Can’t Have It All,” appeared in *The Atlantic* this summer, the link was quickly plastered on my friends’ Facebook pages and circulated in e-mails discussing “work-life balance.” Ms. Slaughter’s personal story of leaving her senior-level position at the state department to return home to her family in Princeton, New Jersey, led me to think about my own life and future. Only two years out of law school, I am hoping to enjoy a long career as an attorney while still having a full life outside the office. The question for me is how I will integrate a demanding client-services job while still meeting personal obligations to my family, my community, and myself.

To answer this question, I spoke to lawyers with diverse and varied histories—single, married, with children, without children, big firm, small firm, government lawyers, and in-house counsel. The only common denominator among the individuals I spoke to is that they have more work experience than I do. I had expected that the advice given to me would differ depending on the person’s life path, but surprisingly, common themes emerged. In this article I have attempted to summarize the advice that was given to me, in hopes that it might also help other young lawyers.

## **View Life as a Chapter Book**

There will be moments in life that require you to focus intensely on work. In the middle of a trial, you might miss the non-profit’s board meeting or your daughter’s volleyball game. At other moments, perhaps when a family member is sick, work will need to take a back seat. In these times of great demand from any part of your life, things might seem out of balance, but this does not mean they are not successfully integrated. As Rebecca Hurley, general counsel of LHP Hospital Group, told me, you have to look at life as a chapter book. In any given chapter, the emphasis might be on work, family, or your own health. When you look on your life collectively, however, and see all the chapters together, there will be a cohesive and hopefully balanced story.

## **Focus on the Things that Only You Can Do**

One of the orientation programs I attended when I started at Jones Day discussed how to use legal secretaries. The firm explained that, generally speaking, associates should not spend their time loading the printer paper or inserting a partner’s handwritten edits into a brief. These are tasks that a secretary can do better and faster, while the lawyer should concentrate on matters requiring a law degree.

Having recently been a law student, I have been accustomed to doing everything for myself because money was tight, and my time was cheap. As a lawyer, my time has quickly become more valuable. Just as a lawyer at the office should be efficient with her time and rely on her secretary, in their personal lives, lawyers might have tasks that could be better handled by someone else. Some lawyers might have a full-time nanny or other in-house help. Relying on others can make you more efficient with your time. Maybe you and a friend can alternate who goes to the grocery store each week and purchase groceries for both. You could use a dry cleaning service that delivers. You may not have a full-time maid or a gardener, but hiring a cleaning or lawn service on occasion allows extra weekend time to spend with friends or family. Online shopping for everything from clothes to school supplies to non-perishable grocery items can also save time. Thinking about what you need to do and what you can allow others to do for you, both in the office and at home, will allow you to maximize each day.

## **Set Your Expectations**

Successfully integrating work and personal life involves establishing expectations and choosing paths in the profession that enable you to meet those expectations. As an attorney in a big firm, it is unlikely that you will have consistent hours that allow you to leave the office every day at 5 p.m. If you and those in your life expect a consistent schedule, disappointment may be inevitable. If predictability is important, however, government and in-house positions may be more suitable.

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# NAWCJ Judicial College 2012!

# THANKS!

The Judiciary College 2012 has concluded. We are proud to thank our phenomenal speakers!

Professor Timothy Terrel  
*Atlanta, GA*  
*Emory University*

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

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*

James McCluskey, M.D., MPH, PhD.  
*University of South Florida*  
*Tampa, FL*

Professor Charles Ehrhardt  
*Florida State University*  
*Tallahassee, FL*

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

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

**HONORABLE STEVEN ROSEN**  
*ST. PETERSBURG, FL*

**HONORABLE MELISSA JONES**  
*Washington, D.C.*  
*District of Columbia Department of Employment Services*

**ELIZABETH RISSMAN**  
*ORLANDO, FL*

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**HONORABLE NIKKI CLARK**  
*TALLAHASSEE, FL*

**HONORABLE WARREN MASSEY,**  
*ATLANTA, GA*

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To set expectations, you also need to define success for yourself. For some, success might mean getting the partner's corner office and being able to afford private school tuition for your children. For others, success might mean living on a smaller salary but being home every night for dinner. Success does not have to be the same for every lawyer. Indeed, if every lawyer were striving to achieve that corner office, the world would be a less interesting place, with few quality public defenders, legal aid attorneys, and in-house counsel. The variety of what one can do with a law degree is part of what makes this profession great.

At the London Olympics earlier this year, Michael Phelps walked home with four gold and two silver medals. For any other Olympian, such a performance would be phenomenal. Yet, based on Phelps winning eight gold medals in the Beijing Olympics in 2008, commentators noted that it seemed like Phelps had lost his touch in 2012. When asked about his performance, Phelps explained: "The things that happened during this Olympics...shows the preparation that I had going into it. I prepared myself to do exactly what I did here. If I would have trained for two more years, then sure, maybe I could have swam faster.... But I didn't want to. That was my decision; to prepare myself how I did, and I got the results that I deserve." Phelps readily admits that he might have given up a bit of swimming perfection in London to enjoy life out of the pool for a couple of years following the Beijing Olympics. In other words, his definition of success in London was not the same as it had been four years earlier. Not only does Phelps' story highlight that different chapters of life have different focuses, but it also shows how defining success affects the decisions you make. If you define success as being the most renowned lawyer in your field, you will likely spend many hours training and perfecting your skill, like an Olympic athlete. You may have to sacrifice your personal life to achieve that goal. But if you redefine success to mean four gold medals instead of eight, you, like Phelps, might have time to enjoy some success outside work as well.

*"Successfully integrating work and personal life involves establishing expectations and choosing paths in the profession that enable you to meet those expectations."*

On a related note, many of the firm leaders I spoke to stated that having passions and commitments outside of work make an attorney a better lawyer. Not only are those individuals more focused and productive when they are working, but they also have connections that lead to new client relationships. Being in a client-services business, sometimes lawyers are hired based on who they know. A lawyer who has many contacts outside of the office is likely to be more successful in business development than the person who spends 100 hours a week in his office alone.

### **Set Your Boundaries**

Being a lawyer will take as much of your time as you give it. If you are willing to work all day, into the night, and every weekend, many legal jobs will unapologetically take that time. It is the individual lawyer's responsibility to set his or her own boundaries. As discussed above, maybe there is a month when you work practically every waking hour, but then it is your responsibility to take some time off the following month.

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# Your 2011-12 NAWCJ Board of Directors

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Florida Office of Judges of  
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Hon. David Langham  
Pensacola, Florida  
Florida Office of Judges of  
Compensation Claims

Lawyers I spoke to also recommended establishing your personal “non-negotiables” early in your career. These are personal obligations that you will not compromise. For example, for religious reasons, you might avoid work on Saturdays or Sundays. Or you may elect to be home every night for dinner, even if that means working from home later into the night. One lawyer told me that she puts those non-negotiables into her calendar and treats them just like client obligations. For example, if you have a meeting with Client A scheduled at 4 p.m., and Client B wishes to schedule a conference call at the same time, you probably would not cancel on Client A. Instead, you would find a different time for the call with Client B. The same can be true if “Client A” is visiting your mom at the nursing home. If you are consistently willing to put personal obligations behind work, it will be difficult to ever meet those personal responsibilities.

*“Finally, the lawyers who seemed most happy with their life in and outside of the office truly enjoyed their job. ... If you love what you do, integrating your profession with your personal life will be a success.”*

The important thing to recognize is that, for the most part, it is the individual lawyer’s responsibility to establish his or her own boundaries. One attorney I spoke to wished he had the confidence to say “no” to assignments and had been more protective of his personal time when he was in private practice. This is not an easy task, especially as a young lawyer when you are trying to impress supervisors. If the pace you are currently operating at is unsustainable, something must change, and it is the attorney’s responsibility to manage his time and turn down assignments when necessary.

Good employers might help monitor boundaries to some extent. For example, Elizabeth Kessler, the Partner-in-Charge of Jones Day’s Columbus office, noted that if she sees that an associate’s hours are exceedingly high one month, she will talk to the associate to see if he needs help. Kessler told me she prefers those high-billing months to be the exception rather than the rule for any single associate so that the lawyer does not burn out. But even if you are fortunate to have a supervisor like Kessler who tries to protect you from burnout, the ultimate responsibility for your personal time and mental health rests with you.

### **Reach Out for Help**

As you take responsibility for setting boundaries and preserving personal time, experienced lawyers also reminded me that you should reach out for help when you need it. One lawyer relayed a story of when a colleague told her about how he was stressed by having to balance work with taking care of his ill parent. The attorney he confided in was not only able to help him manage his workload, but as it turned out, she had been through a similar experience with her parents and could recommend a professional caregiver. If the struggling attorney had never reached out for help, balancing his job with the demands of his personal life would have been much more difficult.

Many attorneys shared stories of relying on co-workers to help in a time of personal difficulty. The circumstances for each were different, but the message for all was the same—these lawyers genuinely liked the people working beside them. If you do not know your co-workers outside of the office, invite them to lunch, drinks, or dinner. If people get to know you outside of the office, they will be more likely to support your life outside of work when you need it.

### **Find a Job You Love**

Finally, the lawyers who seemed most happy with their life in and outside of the office truly enjoyed their job. For some, it was the intellectual challenges. For others, it was the thrill of rushing to complete a last-minute filing or the excitement of performing in front of a jury. It is called “work” for a reason, and everyone has stressful, frustrating days. Because of the diverse opportunities a law degree provides, you can seek out a legal job that matches your expectations, passions, and skill set. If you love what you do, integrating your profession with your personal life will be a success.

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# American Inns of Court

The article appearing on pages three through six is republished from *The Bench*, a periodical published by the American Inns of Court. In their December, 2012 issue, the Inns of Court focuses attention on the subject of balance between our work and the rest of our lives. It is a poignant concern which is worthy of consideration periodically. This article was selected for republication based upon various factors, but essentially because it is well written and insightful. Such focus from *The Bench* is one benefit of membership in an American Inn. There are other benefits of equal, perhaps greater, proportion that are noted here for those who are unfamiliar with the Inns movement.

## Mission of the American Inns of Court

“The Mission of the American Inns of Court is to foster excellence in professionalism, ethics, civility, and legal skills”

The American Inns of Court began in the 1970s. Then Chief Justice Warren Burger was a leader in importing the concept of Inns from Great Britain. The first American Inn was formed in 1980. American Inns are modeled after the traditional British Inns. Typical American Inns include judge and lawyers of varying experience, Some Inns also include law students. Generally, Inns focus on providing education and collegiality among legal professionals. This is typically delivered through presentations prepared by Inn members working as a team, often called “pupilage teams.”

The American Inns movement is relatively recent, having developed over the last thirty years, it has grown dramatically.

The E. Robert Williams Inn in Jacksonville, Florida was founded in 2007. This Inn is comprised of “lawyers, judges, mediators, and law students who are significantly involved in the Workers' Compensation area of law.”<sup>1</sup> That the practice of workers' compensation is specialized is recognized by this Inn's dedication to and focus upon this speciality. In Philadelphia, Pennsylvania, the Judge Alexander F. Barbieri Workers' Compensation American Inn has a similar focus. New Jersey is home to the Justice James H. Coleman, Jr. New Jersey Workers' Compensation American Inn of Court. There may be other such focused Inns, but Google searches did not readily reveal them.

Not all Inns are specialized, although specialization is not uncommon. In fact The American Inns website lists nine specialty areas upon which various Inns focus.<sup>2</sup> Despite the singular focus of the Williams, Barbieri, and Coleman Inns, workers' compensation is not listed as a specialty. This may result from the relatively few Inns focused on workers' compensation. Most Inns, however, “concentrate on general issues surrounding litigation practice.”<sup>3</sup> The Inn environment provides excellent opportunities for substantive education. More importantly, however, this unique format provides an exceptional platform from which to practice the seemingly dying art of mentorship.

The workers' compensation adjudicators who participate in these three specialized Inns are influencing the practice of workers' compensation law in their states and communities. Similarly, workers' compensation adjudicators who participate in any Inn are able to use that involvement to contribute to professional practice in their communities, to the benefit of a broader legal practice that may nonetheless include workers' compensation practitioners. Years ago, judges mentored both during proceedings and informally through conversations before or after proceedings. Many exceptional lawyers and judges can recount excellent examples from their early years, in which some adjudicator took an interest, expressed a concern, or offered advice. The Inns paradigm offers adjudicators the opportunity to contribute to the growth and development of attorneys in a setting that is often more comfortable than those traditional mentoring opportunities.

Have you considered joining an Inn? Is your local legal community and population of workers' compensation practitioners large enough to justify formation of a specialized workers' compensation Inn? If so, contact the American Inns of Court.

Are you a member of a specialized Inn that we have missed? Do you have a mentoring story that is worthy of publishing for the benefit of all workers' compensation adjudicators? If so, contact the Lex and Verum.

1. <http://home.innsofcourt.org/for-members/inns/the-e-robert-williams-american-inn-of-court.aspx>
2. criminal practice, federal litigation, tax law, administrative law, white-collar crime, bankruptcy, intellectual property, family law, employment and labor law; <http://home.innsofcourt.org/about-us/get-to-know-the-american-inns-of-court.aspx>
3. <http://home.innsofcourt.org/about-us/get-to-know-the-american-inns-of-court.aspx>

# Michigan Adjudications System Undergoing Change, Hearings to Remain Local

Michigan workers' compensation has been in the news in recent years. When we hear Michigan, we may initially think of Brown v. Cassens Transport (Case 10-2334, Sixth Circuit Court of Appeals, July 7, 2011). Michigan is the venue for this federal litigation that may resolve whether an injured worker may sue their employer under the Racketeer Influenced and Corrupt Organizations Act (RICO). This litigation has been the focus of both articles and commentary. For many in the workers' compensation industry, Michigan has become synonymous with Brown as we have followed the litigation.

Michigan has also been in the news, however, because of changes to the structure of their workers' compensation adjudication process. Most recently, this has focused on geography, more on that below. Disputes in Michigan workers' compensation are heard and decided by members of the Board of Magistrates. The Board is statutory, like many of the adjudication processes in the various states. The Board consisted of 30 members, pursuant to Michigan's 1985 statute. These Magistrates are appointed by the Governor and confirmed by the Senate. In 2003, the Governor reduced the Board by four, to 26 Magistrates, by Executive Order. In 2009, the Board was reduced another 9 Magistrates to 17 by Executive Order.<sup>1</sup>

Magistrates were required to either possess minimal, 5 years, workers' compensation experience, or pass an examination. Magistrates were limited to 12 years of service.<sup>2</sup> Late in 2011 the qualifications were amended and simplified:

The governor shall appoint as a worker's compensation magistrate within the Michigan administrative hearing system only an individual who is a member in good standing of the state bar of Michigan and has been an attorney licensed to practice in the courts of this state for 5 years or more.<sup>3</sup>

The 2011 statute codifies the size of the Board, adopting the 17 Magistrate size established by executive order in 2009. The statute now also requires annual evaluation of magistrates, including rate of affirmance, productivity, manner of conducting hearings and knowledge of the law and evidence rules. Written surveys and comments from parties are also contemplated by the statute. Coincidentally, 9 of the 17 Magistrate terms expire January 26, 2013, and Governor Rick Snyder is currently considering the applicants who met the November 30, 2012 application deadline.<sup>4</sup>

In Michigan, trials are heard by Magistrates at 12 workers' compensation bureau offices throughout the state.<sup>5</sup> Hearings regarding unemployment compensation and workers' compensation disputes are conducted in these various locations, as are proceedings in other administrative matters. In September, the Michigan Administrative Hearings System (MAHS) announced that it would close offices in Flint (Genesee County) and Grand Rapids (Kent County).<sup>6</sup> The cases assigned to the Flint office were to be split with Genesee County accidents to be heard in Dimondale (Lansing, Ingham County) and Lapeer County cases to be heard in Pontiac (Oakland County, one county south of Lapeer). According to Google Maps, the mileage from Lapeer, Michigan (county seat of Lapeer County) to Pontiac is about 35 miles. The distance from Lapeer to Flint, the office to be closed, is about 22 miles. However, the distance between Flint and Dimondale (Lansing, the state Capitol) is more significant, about 67 miles (two counties distant). Of course, all residents of Genesee County do not live in Flint, nor all residents of Lapeer County live in Lapeer. Driving distances for individuals may therefore be more or less than the distances between these municipalities.

The MAHS focus with these closures is budget related. The agency goal:

to balance the needs of our customers with our available resources and construct the most fair, efficient and customer centric delivery system possible.<sup>7</sup>

Michigan, no less than other states, has been faced with budget issues in recent years.<sup>8</sup> The extent to which the state economy has depended upon manufacturing generally and the automobile industry specifically is well known.

Not everyone was willing to acquiesce in the closure of these offices. Lawrence Younkin seeks workers' compensation benefits, and is in a dispute with his employer. His case was assigned to the Flint office, and was scheduled for hearing in December 2012. The office closures announced in September would have resulted in his hearing venue changing to Dimondale (Lansing).

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# NCCI Report Outlines Costs of Co-Morbidity

Expanding on a theme set by a 2010 study of the effects of obesity, NCCI published an October 2012 report of their broader study of co-morbidity generally. The report notes that the average medical cost per claim is “approximately \$6,000.” The report notes that co-morbidities are a critical cost element for workers’ compensation claims, and there is growth in the frequency of these complications.

The Report notes that there has been a steady increase in the volume of claims that include a co-morbidity diagnosis. The rate in 2000 was 2.4 percent, which “has almost tripled” to about 6.6% in 2009. The illustrative chart on page two of the Report demonstrates a steady and progressive annual increase over the nine years after 2000.

The highest volume of co-morbidity is in hypertension and drug abuse. Hypertension rates are approaching three percent, and drug abuse has exceeded two percent. Other significant complications, are pulmonary disease and diabetes. Pulmonary disease has reached one-half of one percent and diabetes has almost reached one percent. These four therefore account for the majority of both the volume and the growth in the co-morbidity study.

Other conditions that were deemed significant enough to include, but which account for much smaller portions of the overall co-morbidity population include cancer, cerebrovascular disease, dementia, HIV, hemiplegia, liver disease, renal disease, peripheral vascular disease, pregnancy and ulcer disease.

The Report highlights that there is demonstrable increase in the prevalence of complicating medical conditions in the general U.S. population. The Report notes the conclusions of the Center for Disease Control estimates regarding growth “in the general population” in hypertension (from 25.6% to 28.7%), obesity (from 20.1% to 27.2%) and diabetes (from 4.4% to 6.7%).

The Report includes an informative chart demonstrating the impact of worker age on the presence of co-morbidity. The obesity complication is most prevalent at about 45 years of age, and both hypertension and diabetes are most prevalent around 52.

The report, Co-morbidities in Workers’ Compensation is here:

<https://www.ncci.com/documents/Research-Brief-Comorbidities-in-Workers-Compensation-2012.pdf>

“Michigan” from Page 8.

Mr. Younkin sued, and in early November was successful, in part. The Circuit Court ordered that Mr. Younkin’s case must be heard “locally,” in Genesee County (Flint). Later in the month, the Circuit Court expanded the decision and ordered state officials to hold all workers’ compensation hearings in the locality where the injury occurred, as required under Michigan law.<sup>8</sup>

Notably, the Circuit Court’s decision does not compel MAHS to alter its closure decisions or to retain offices in Flint or Grand Rapids. The Circuit decision merely compels the location of the hearing, pursuant to the workers’ compensation statute. The realities of the budget and our economy remain for administrators to address. The Magistrates Board is faced with procuring space in which to conduct their hearings somewhere in Genesee County.

There is no question that proceedings in Michigan are changing. The Magistrate Board has undergone statutory change, and may soon welcome fresh faces in January. Hearing locations may change, and proceedings in some counties may even fluctuate as Magistrates may elect to borrow space to comply with statutory venue requirements. Magistrates will adjust, litigants will adjust, workers’ compensation will continue to change. After all, “the only constant is change.”

- 1 See, Michigan Executive Order 2009-53; Lex and Verum, Volume V, Page 7, January 2010; Workers’ Compensation Agency 2010 Annual Report, Page 18. [http://www.michigan.gov/documents/wca/wca\\_2010\\_Annual\\_Report\\_349084\\_7.pdf](http://www.michigan.gov/documents/wca/wca_2010_Annual_Report_349084_7.pdf)
- 2 Id.
3. Act number 266, Public Acts of 2011, <http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2011-PA-0266.pdf>
4. Announcement, [http://www.michigan.gov/documents/wca/wca\\_bom\\_applications\\_2012\\_403154\\_7.pdf](http://www.michigan.gov/documents/wca/wca_bom_applications_2012_403154_7.pdf)
5. [http://www.michigan.gov/documents/wca\\_Hearing\\_Site\\_Addresses\\_80087\\_7.pdf](http://www.michigan.gov/documents/wca_Hearing_Site_Addresses_80087_7.pdf)
6. [http://www.michigan.gov/documents/wca/9-25\\_MAHS\\_Office\\_Closures\\_2\\_399146\\_7.pdf](http://www.michigan.gov/documents/wca/9-25_MAHS_Office_Closures_2_399146_7.pdf)
- 7 Id.
8. The state recently “required the department to reduce its operating budget from \$13.6 million to \$10 million. “[http://www.mlive.com/business/mid-michigan/index.ssf/2012/11/judge\\_orders\\_genesee\\_county\\_wo.html](http://www.mlive.com/business/mid-michigan/index.ssf/2012/11/judge_orders_genesee_county_wo.html)
9. Id.
10. Heraclitus, Greek Philosopher.

# LexisNexis Top 25 Blogs for Workers' Compensation and Workplace Issues - 2012 Honorees

The LexisNexis Workers' Compensation Law Community ([www.lexisnexis.com/wc](http://www.lexisnexis.com/wc)) has selected its 2012 honorees for the Top 25 Blogs for Workers' Compensation and Workplace Issues. Congratulations to all the honorees! We thank our community members and Larson's National Workers' Compensation Advisory Board members for giving us their input.

These top blogsites contain some of the best writing out there on workers' compensation and workplace issues. They contain a wealth of information for the workers' compensation community with timely news items, practical information, expert analysis, practice tips, frequent postings, and helpful links to other sites. These blogsites also show us how workplace issues interact with politics and culture. Moreover, they demonstrate how bloggers can impact the world of workers' compensation and workplace issues.

You can view the complete list below.

## **NATIONAL BLOGS**

Comp Time by Roberto Cenicerros, <http://www.businessinsurance.com/section/blogs02>

Published by Business Insurance

Those who have an interest in the workers' comp carrier's perspective need look no further than "Comp Time," written by business journalist Roberto Cenicerros. Part of the large web site maintained by [businessinsurance.com](http://businessinsurance.com), Roberto's entries concentrate on risk management, business insurance and workers' compensation. His blog continues to provide a broad overview of current developments in the various fields. Roberto's September 24, 2012 summary of an IAIABC committee's draft model rule addressing opioid pain medication prescriptions, is an excellent example of the fare offered on his site. His August 5, 2012 post, discusses an emerging phenomenon—that an increasing number of U.S. employers are having to turn to various state markets "of last resort" as insurers move away from riskier, less profitable accounts. Even claimant-oriented practitioners can profit from Roberto's insight. See, "Lump-sum settlements encourage injured employees to return to work: WCRI," in which Roberto highlights a recent WCRI report that appears to fly in the face of employer opposition to lump-summing.

From Bob's Cluttered Desk, <http://www.workerscompensation.com/compnewsnetwork/from-bobs-cluttered-desk>

Published by Robert Wilson

Self-described, the blog "From Bob's Cluttered Desk" is a mixture of Bob's "thoughts, ramblings, observations and rants." Virtually all show the breadth of Bob's experience. See, e.g., the September 12, 2012 posting, "The Road to Hell: Reforming the Reform of Workers Compensation Reformers"], within which Bob gives his views related to the recent California "reform" legislation and all-too-often ineptitude of hearing officers, such as one from Virginia who misconstrued an important legislative change in that state related to unexplained accidents. Many of the posts have a humorous side [see Workers' Comp Fraud 101: Lesson 2 - When Shot in a Sex Club, Don't Lie About It]. If you haven't already done so, do yourself a favor—bookmark Bob's site.

*Continued, Page 11*

Managed Care Matters, <http://www.healthstrategyassoc.com/wordpress/>

Published by Joseph Paduda

Already a three-time winner of our Top Blogs award, “Managed Care Matters” continues its excellent offerings to insurers, employers, and healthcare providers. Noted expert, Joseph Paduda, the principle of Health Strategy Associates, offers commentary and opinion on a broad range of topics. The blog was redesigned in mid-September 2012, offering a pleasing stop for those looking for employer/carrier-oriented content. Paduda continues to target physician drug dispensing practices. See, for example, his September 26, 2012 post entitled, “Physicians charged with inappropriate dispensing”. An excellent June 20, 2012 offering entitled, “What’s a Prescription Monitoring Program and why you should care,” is excellent as well. Paduda posts interesting summaries of workers’ compensation conferences. See “Is there unnecessary medical care in workers comp?”, a discussion of Dr. Rick Victor’s remarks at the August WCI Conference on care that does not improve patient outcomes.

Workers’ Comp Insider, <http://www.workerscompinsider.com/>

Published by Lynch Ryan

Most bloggers agree that maintaining a blog in its early days is easy. The experience is heady and exciting. One sees one’s posts jump out onto the web for others to read and appreciate. The true strength of a blog is its staying power. Now in its 10th year, the Workers’ Comp Insider had stood the test of time, and then some. Its frequent offerings remain consistently high in quality, treating all sorts of comp issues, risk management, business insurance, and workplace health and safety across the nation. The blog offers straightforward case analysis. See, for example, the July 11, 2012 discussion of a case involving an employer who asked for employee volunteers to cut the grass when the firm’s landscaping contractor quit. One of the volunteers, an overweight computer programmer who was an incessant smoker with a sedentary lifestyle, suffered a heart attack while moving one of the mowers [see “Annals of Compensability: Sedentary Worker in the Garden”]. The “Insider” also includes unusual pieces, such as the July 24, 2012 article entitled, “Extraterrestrial Exposures: Astronaut Medical Oddities,” a discussion of the medical toll that space takes on travelers’ bodies and minds.

### **STATE-SPECIFIC BLOGS**

The Rassp Report,

<http://www.lexisnexis.com/community/workerscompensationlaw/blogs/workerscompensationlawblog/archive/2010/12/15/robert-rassp-report.aspx>

Published by Robert G. Rassp, Esq.

Continuing his annual presence on the Top Blogs List is Bob Rassp, whose thoughts and observations continue to be showcased in “The Rassp Report.” A noted expert on the California comp world, one colleague quipped that Rassp had digested the recent California “reform,” SB 863, before many others in the state had digested their lunches. Indeed, Bob continues to shine when it comes to scouring case law and/or legislation and summarizing the salient points. As the author of *The Lawyer’s Guide to the AMA Guides and California Workers’ Compensation* (LexisNexis), he’s particularly skilled with the troublesome AMA Guides (see his August 22, 2012 article entitled, “AMA Guides Fifth Edition Figure 15-19: Strict or Alternative WPI Rating?” His “Catching Up on Some Zs in California – Sleep Disorders” (February 20, 2012) piece, is equally interesting and enlightening. Since issues crop up in California earlier than many other states, Bob’s writing is a profitable read not only for those on the West Coast, but all across the nation.

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# **NAWCJ**

## **National Association of Worker's Compensation Judiciary**

P.O. Box 200, Tallahassee, FL 32302; 850.425.8156 Fax 850.521-0222

San Diego Workers' Compensation Blog, <http://www.sandiegoworkerscompensationlaw.com/>

Published by Thomas M. DeBenedetto, Esq.

Returning to the list for a second year is “San Diego Workers' Compensation Blog,” offered by the claimant attorney, Thomas M. DeBenedetto. Representing injured workers for almost 20 years, his first focus is California, but he scours the news and reporters for other material from around the world as well. On the home front, for example, he posted multiple articles on the workers’ compensation overhaul passed by the California legislature and signed by Governor Brown. A July 31, 2012 article, “CWCI study explores frequency and cost of work-related neck, spine injuries,” provided details regarding a report by the California Workers' Compensation Institute entitled “Injury Score Card,” examining the prevalence of work injury claims for both head and spine injuries (not involving the spinal cord) from 2001 through mid-2011. Beyond the Golden State’s borders, DeBenedetto reported, in a September 13, 2012 post, “Researchers make surprising discovery concerning work injuries and coffee,” that according to a recent study by researchers in Norway, a cup of coffee may do wonders in reducing the severity of many common work-related injuries.

Workers Comp Zone, <http://workerscompzone.com/>

Published by Julius Young, Esq.

California specialist, Julius Young, again graces the “Top Blogs” listing with his witty and insightful “Workers Comp Zone.” For a number of years now, practitioners and others within (and without) the Golden State have benefited not only from his analysis of California’s workers’ compensation system—[see, e.g., September 17, 2012, “Brown Set to Sign SB 863,”—but have gleaned important practice points like those contained in his May 22, 2012 post, “The Great Divide,” in which Julius illustrates the importance of looking beneath the surface of a comp claim to discern what really happened to cause the worker’s injury. In that post, Julius shows that by concentrating not just on a truck driver’s clearly compensable claim, but by analyzing the mechanical causes of the wreck, others in Julius’ firm were able to proceed against Volvo, the truck manufacturer, and recover \$11.4 million, much more than the comp outlay. Julius ponders comp issues 24/7. Readers of his blog note that in September, he posted several musings while on vacation in Budapest.

Delaware Detour & Frolic

<http://law.lexisnexis.com/practiceareas/Workers-Compensation-Law-Blog/Workers-Compensation/Delaware-Detour-and-Frolic>

A workers’ comp law blog by Cassandra Roberts, Esq.

An experienced practitioner from “The First State,” Cassandra Roberts, the senior workers’ compensation partner at Young Conaway Stargatt & Taylor, LLP, continues her outstanding posts on her coquettishly titled, yet seriously proffered “Delaware Detour and Frolic.” The titles to her posts are entertaining; the content clear and creative. See, for example, her April 27, 2012 offering, “Paintballing, Wrestling and a Head-Banging Good Time: Another Commentary on Horseplay in Delaware,” or “The Dearly Departed—Illegal Alien Status Does Not Work a Forfeiture in Delaware,” dated February 9, 2012, discussing the claim of a deported undocumented worker who may indefinitely be paid comp benefits in spite of the fact that he cannot/will not present himself for a DME.

Ouch! Workers’ Compensation News & Issues, <http://rolandlegal.wordpress.com/>

Published by Roland Legal PLLC

“OUCH!: Workers’ Compensation News & Issues” joins the Top Blogs List again, with its many offerings related to Kentucky workers' compensation law and practice. The blog includes short commentary on Board Opinions, as they are filed, news articles involving the state’s Department of Workers’ Claims within the great state of Kentucky, and commentary on appellate decisions each year. For example, the January 21, 2012 discussion of the important pneumoconiosis decision by the state high court in *Vision Mining v. Gardner* is very clear and cogent. Roland Legal also provides its readers with news reports related to workers’ compensation law and practice from around the nation.

Massachusetts Workers' Compensation Lawyer Blog

<http://www.massachusettsworkerscompensationlawyerblog.com/>

Published by Altman & Altman LLP

Another past winner, “Massachusetts Workers’ Compensation Lawyer Blog,” from Altman & Altman, a long-time Bay State claimants firm, continues its focus on Massachusetts news, trends and comp law.

*Continued, Page 13.*

Characteristic of the many state-oriented posts was one on April 18, 2012, entitled "Massachusetts Senate to Consider Greater Penalty for Failure to Purchase Workers' Compensation." The blog also offers other articles from around the nation, particularly if they have applicability in Massachusetts. Consider, for example, its August 7, 2012 post, "Workers with Paid Sick Leave Less Likely to be Injured on Job". The article analyzes a report by the CDC's National Institute for Occupational Safety and Health (Washington, D.C.) that found workers with paid sick leave were 28% less likely to report an occupational injury that needed medical care.

Michigan Workers Comp Lawyers

<http://workerscomplawyerhelp.com/workers-comp-lawyer-blog>

Published by the Law Offices of Alex Berman, PC

Last year we first highlighted this claimant-oriented blog, Michigan Workers Comp Lawyers, noting the mix of workers' compensation articles on "everything Michigan." Alex Berman's office continues to post as many articles in a week as some blogs do in a month. Most are short—all are clear. At the end of each piece, Berman even includes an estimate of how long it will likely take you to read it. Consider the August 8, 2012 offering that explains that since Michigan is (like most jurisdictions) a wage loss state, it is entirely possible to have a work-related injury and no payment of benefits (other than medical). And agree or disagree with its point of view, but the blog's July 24, 2012 posting entitled, "How Obamacare Can Help Workers' Compensation," is an excellent examination of this controversial new federal law.

Missouri Workers' Compensation Lawyer Blog

<http://www.missouriworkerscompensationlawyerblog.com/>

Published by Aaron Sachs & Associates, P.C.

Launched in mid-May, 2011 by Aaron Sachs & Associates, a claimants firm, this comp blog is not as Missouri-centric as its name would suggest. While it does have a clearly focused emphasis on things within the "Show-Me" state [see, e.g., an August 12, 2012 post on the compensability of mental injuries in Missouri, as well as an August 4, 2012 post related to the severe drought and heat that Missouri residents had been forced to endure and the relationship between such extreme conditions and work-related heat stroke, the site also offers a mixture of items from elsewhere. An August 26, 2012 post provided an excellent summary of an article released by the University of Sydney (Australia) entitled, "Office workers at increased risk for "chair disease", study finds."

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# Comings and Goings

## California Morns Judge Schodde.

Appeals Board Judge Melanie Schodde passed on November 12, 2012. First appointed in 2006, she served in the Riverside and San Bernardino offices. Admitted to the California Bar in 1970.

## New Director for Georgia Board of Workers' Compensation

Elizabeth Gobeil was sworn in as a Director of the Georgia State Board of Workers' Compensation in November. She was formerly in private practice, a partner at Thompson Hine in Atlanta. She replaced Commissioner Warren Massey, whose term had expired.

## Director Massey Transitions to the Trial Bench

Warren Massey served eight years as a Director of the Georgia State Board of Workers' Compensation, since May 2004. Following the appointment of his successor, he has become an administrative law judge for Board.

## Assistant Insurance Commissioner Bob Tomlinson appointed Director of Kansas Office of Administrative Hearings

Bob Tomlinson was a special education teacher for 17 years, served in the Kansas House of Representatives for six terms, and as Assistant Commissioner of the Insurance Department for 10 years. December 3, 2012 he will take over as head of the Office of Administrative Hearings.

Nevada Workers’ Compensation Law Blog, <http://www.nevadaworkerscompensationlaw.com/>

Published by Virginia Hunt Law Office

Nevada Workers’ Compensation Law Blog is written by Virginia Hunt, an attorney with more than fifteen years experience in the field, is a former hearing officer who currently represents injured workers. The majority of her posts continue to offer helpful advice to those who have suffered compensable injuries. For example, her May 1, 2012 post, “Can You Be Fired While You Have a Nevada Comp Claim?”, focused on Nevada’s law of retaliatory discharge, on the ability of an employer to terminate a “light duty” employee after he or she recovers from the injury, and the importance of making certain treating physicians are familiar with the injured worker’s actual job duties and responsibilities. When the temperature in Nevada reached 114 degrees in July, Virginia posited that Nevada law had not been supportive of such claims, noting that working in heat was often not so much incidental to the character of the employer’s business as it was a common condition that the public also had to endure [see “Illness from Excessive Heat Probably Not Work Comp,” July 7, 2012]. Another fine example of Virginia’s clear writing can be seen in her January 11, 2012 post, “Occupational Illnesses: When to File a Claim,” a posting that discusses an important Nevada case, *City of Las Vegas v. Lawson*.

New Jersey Workers’ Compensation Lawyer Blog, <http://www.njworkerscompblog.com/>

Published by John Geaney, Esq. of Capehart Scatchard

Continuing as one of the most active defense-related blogs is “New Jersey Workers' Compensation Blog,” by John Geaney, of the defense firm, Capehart Scatchard. Commenting on all New Jersey cases that reach the appellate level (and others that do not), Geaney has discussed such disparate comp issues as the special New Jersey statute (N.J.S.A. 2A:13-5) that limits the amount of litigation expenses that can be deducted from the employer/carrier’s share in a subrogation case to \$750 [September 25, 2012], the decision by the New Jersey Supreme Court that an injured employee may not sue the comp carrier for pain and suffering allegedly caused by the carrier’s delay in paying for medical services [August 6, 2012], and a May 2009 appellate court decision denying benefits to a worker who the court determined to be a “casual employee” [June 1, 2012]. Geaney also writes on issues related to the comp world, such as claims filed under the ADA or FMLA. See, for example, his excellent summary of *Regan v. Faurecia Automotive Seating, Inc.*, 2012 U.S. App. LEXIS 9470 (6th Cir. 2012), posted September 21, 2012.

North Carolina Workers’ Compensation Lawyer Blog, <http://www.northcarolinaworkerscompensationlawyerblog.com/>

Published by Law Offices of Michael A. DeMayo, LLP

Whether it’s inviting injured workers to utilize the methodology of popular productivity guru, David Allen (Getting Things Done) [see September 6, 2012] to deal with the many “open loops” that a workplace injury or illness can create in one’s life, or his February 17, 2012 suggestion to those in charge of the North Carolina workers’ compensation system that beneficial changes could—and should—come from “nudges” instead of massive overhaul bills, Michael DeMayo’s musings are edgy, fun, creative and insightful. Head of a fast growing claimant’s firm in North Carolina (with a new branch in Columbia, S.C.), DeMayo each year awards fifteen high school seniors \$2,500 scholarships to be used toward their college educations.

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## Did you know?

Twenty-three clinical trials studied the use of epidural corticosteroids for sciatica (pain or discomfort associated with the sciatic nerve). According to Medpagetoday, these studies “showed a small but statistically significant short-term improvement in leg pain with epidural injection of corticosteroids.” The long-term effects “were even more modest and did not achieve statistical significance. Epidural corticosteroids had no effect on back pain.” The conclusion? “Patients with sciatica derived minimal benefit from epidural corticosteroids, raising questions about the value of the treatment for the condition, authors of a meta-analysis concluded.”

The complete article is here: <http://www.medpagetoday.com/Neurology/GeneralNeurology/35927>

Columbus Workers' Compensation Law Blog  
<http://www.columbusworkerscompensationblog.com>  
Published by Philip J. Fulton Law Office  
The claimant-oriented Philip J. Fulton Law Office of Columbus, Ohio offers comp news and commentary associated with the Buckeye state. Fulton, author of the widely cited Ohio Workers' Compensation Law (LexisNexis) publication and a leading Ohio attorney, draws attention to the real-life, day-to-day challenges facing construction and factory workers. He shines light on those Ohio firms who've been fined by OSHA or a state agency [see, e.g., "Two Ohio workers have to suffer through finger amputations," dated June 22, 2012 and "Ohio construction collapse injures three workers," Observing the intricate way in which the comp and social security disability worlds are joined, Fulton offered an interesting take on the subject in "Some unemployed turn to disability after benefits run out" on January 19, 2012.

Pennsylvania Workers' Compensation Lawyer Blog  
<http://www.pennsylvaniaworkerscompensationlawyerblog.com>

Published by Brilliant & Neiman, LLC  
Consistent in its high level of quality, this Pennsylvania oriented blog from Brilliant & Neiman, LLC, a claimants firm, offers not only excellent commentary related to recent Pennsylvania court rulings affecting injured workers' claims, but other unusual articles that pique one's interest. A recent posting (August 20, 2012) reported that a new treatment for pro basketball player Andrew Bynum's knee might eventually be utilized for lower profile injured workers. Regenokine therapy, also utilized by L.A. Lakers' Kobe Bryant and N.Y. Yankees' Alex Rodriguez, takes blood drawn from the patient's body, extracts certain elements from the blood, adds beneficial compounds to it and then injects the blood back into the patient's knee. It's been successful in a number of high profile cases and may someday be available in treating back injuries and other work-related injuries. Another article illustrating the diversity of the blog's offerings is an April 10, 2012 discussion of concussions, including one suffered by actress Melissa Gilbert on the TV series, Dancing with the Stars.

#### **NICHE BLOGS**

Navigable Waters  
<http://navwaters.com>

Published by Mouldoux, Bland, Legrand & Brackett  
The only Top Blog devoted to the Longshore Act, the Jones Act, and the Defense Base Act, "Navigable Waters" is clearly also one of the most active blog sites in the comp industry.

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## What are the Qualities of a Good Mediator

The answer, according to Liverpool James Moore University, is complex. They explain that there are general skills and mediation-specific skills that are required. Their complete perspective is set forth in the linked document below, but the following are notable quotes from their compendium:

What are the qualities and personal characteristics sought in a mediator?

- The patience to do the job as disputants inch their way towards resolution.
- The personality probing skills of a good psychiatrist.
- The ability to give full attention to disputants and staying focused.
- Demonstrated integrity and impartiality, putting one's own opinions, reactions and even some principles to one side.
- Ability to empathize and be gentle, to withhold judgment.
- Comfortable and able to tolerate high emotion, arguments, interruptions and tears.
- Imaginative in solving problems.
- Ability to be directive and to confront.
- Credibility through experience and impact.
- Low need for recognition, credit, having things turn out your own way.

Posted by :

[http://www.ljmu.ac.uk/personnel/personnel\\_docs/Mediation\\_-\\_skills\\_and\\_qualities\\_of\\_a\\_mediator.doc](http://www.ljmu.ac.uk/personnel/personnel_docs/Mediation_-_skills_and_qualities_of_a_mediator.doc)

## The Lex and Verum

published monthly by

## The National Association of Workers' Compensation Judiciary

P.O. Box 200, Tallahassee, FL 32302; 850.425.8156  
Fax 850.521-0222

Averaging almost four posts per week, it’s a compendium of important content. Providing commentary on all important cases within its purview—see, e.g., the discussion of the decision by the 11th Circuit in *Vasques v. YII Shipping Co., Ltd.*, posted September 25, 2012, or the excellent treatment of a tricky DBA issue, “Should I Seek War Hazards Reimbursement or File an Appeal?”, filed May 31, 2012. For an excellent discussion of whether child support payments can be garnished from LHWCA (or DBA) benefits, see Jon Robinson’s excellent discussion dated August 27, 2012.

The Official Medicare Set Aside Blog and Information Resource, <http://www.medicaresetasideblog.com/>  
Published by MEDVAL, LLC

It’s been said that “a person with one watch always knows what time it is, a person with two watches is never sure.” A blog using the one-watch approach is The Official Medicare Set Aside Blog and Information Resource, published by MEDVAL, LLC, the well known firm concentrating in MSAs and their complex issues. With the lion’s share of the postings offered up by Jen Jordan, MEDVAL’s General Counsel and author of *The Complete Guide to Medicare Secondary Payer Compliance* (LexisNexis), the site’s analysis is first rate. Consider “Medicare Advantage Plans do have a Private Cause of Action After All,” posted June 29, 2012, and “It Is Apparently Not Just Medicare That Work Comp Routinely Burdens,” posted May 30, 2012. Ms. Jordan doesn’t pull her punches. See her direct and cogent commentary in “At What Point Does a Preauthorized Medicare Covered Surgery Stop Being Medicare’s Payment Responsibility?” - *Salveson v. Sebelius*,” posted May 14, 2012.

### **SAFETY AND EMPLOYER-RELATED BLOGS**

SafetyAtWorkBlog, <http://www.safetyatworkblog.com>

Published by Kevin Jones

For a number of years now, Australian editor Kevin Jones has been writing and compiling an excellent mix of “news, commentary and opinion” on workplace safety and health in “the Land Down Under.” Aided by several other contributors, Jones offers timely and interesting entries that should interest workers’ compensation professionals in North America, as well. The blog takes a broad and thoughtful swath. For example in a May 7, 2012 entry, “Workplace safety and the human condition,” Jones comments upon a host of interesting articles and reports that had recently come across his desk related to social concerns. One included a pastoral letter issued by the Australian Catholic Social Justice Council on the “Dignity of Work,” through which Jones drew parallels between dignity and values-based safety in the work environment. A September 10, 2012 piece entitled “Managing on luck is not managing safety” is another example. It discussed the use of bright colored clothing for clerks and enhanced lighting techniques at drive-thru liquor stores (the Aussies call them “bottle shops”).

The Safety Blog, [www.safetyservicescompany.com/blog](http://www.safetyservicescompany.com/blog)

Published by Safety Services Company

In its specialized offering, “The Safety Blog,” Safety Services Company offers timely articles related to workplace safety programs and training, particularly within the construction and manufacturing industries. The blog’s interest areas literally straddle the U.S. and Canadian borders, including within its electronic pages interesting news bits and practical advice. In a September 28, 2012 posting, for example, the blog included a story about a Mississippi woman accused of posing as an OSHA trainer to deliver fraudulently training to more than 1,000 fishermen in the aftermath of the 2010 Gulf of Mexico oil spill. Another article, posted July 2, 2012, dealt with a new initiative in British Columbia that is focusing on workplace bullying.

Work Comp Roundup, <http://blog.reduceyourworkerscomp.com/>

Published by Amaxx Risk Solutions, Inc.

A continued standout, receiving a Top Blog award for the fifth consecutive year, “Work Comp Roundup” remains a veritable cornucopia of cost containment ideas, best practices, techniques and strategies. Most of the content is written by Rebecca Shafer, J.D., President of Amaxx Risk Solutions. A “go-to” spot for claims managers and others on the front lines of cost containment [see “How to Properly Reserve a Work Comp Claim,” and “Five Practical Ways to Reduce Medicare Set Asides (MSA).” Some are humorous, such as Becki’s discussion of the Connecticut case in which the owner of a chimpanzee that mauled and blinded an employee contended that the victim’s action should be barred by exclusivity—the chimp was allegedly the victim’s co-employee [see “CONN Attorney Suggests Injury to Woman Mauled by Chimp Should Be Workers Compensation Claim”]. All are worth your time as a reader.

*Continued, Page 17*

# Upcoming Seminars

**Florida Workers' Compensation Claims Handling 2013.** February 5, 2013, Emerald Coast Convention Center, Ft. Walton Beach, Florida.  
<http://www.mcconnaughhay.com/seminars/1367/>

**34<sup>th</sup> Annual Medical Seminar on Workers' Compensation,** February 24-26, 2013, Francis Marion Hotel, Charleston, South Carolina. <http://www.scwcea.org/>

**WCRI Annual Issues and Research Conference,** February 27-28, Boston Marriott Cambridge, Cambridge Massachusetts.  
<http://www.wcrinet.org/conference.html>

**American Bar Association Workers' Compensation Committee 2013 Midwinter Seminar and Conference,** Co-sponsored by Tort, Trial and Insurance Practice Section, March 14-16, 2013, The Biltmore Hotel, Coral Gables, Florida.  
<http://apps.americanbar.org/dch/committee.cfm?com=LL122000>

**Boardwalk Seminar 2013,** Bally's Atlantic City, Atlantic City, New Jersey, April 17-19, 2013. <http://www.nj-justice.org/nj/index.cfm?event=showPage&pg=ExhibitMain>

**SEAK 33<sup>rd</sup> Annual National Workers' Compensation and Occupational Medicine Conference,** The Resort and Conference Center at Hyannis, Hyannis, Cape Cod, Massachusetts July 16-18, 2013 Hyannis, Massachusetts. Cost is \$975.00.

These programs are listed here for information only. The NAWCJ does not endorse these programs or participate in their production.

*"Top Blogs" from Page 16*

## NEW BLOGS TO WATCH

Evidence Based

<http://prium-evidencebased.blogspot.com>

Published by PRIUM

Another newcomer deserving attention is the curiously-named, "Evidence Based" blog offered by Michael Gavin, Chief Strategy Officer of PRIUM, and Mark Pew, the firm's Senior Vice President of Business Development. As noted on the landing page of the blog, PRIUM is "a URAC-accredited workers' compensation-focused medical management company that provides innovative solutions to insurance companies, third party administrators, pharmacy benefit managers, re-insurers and self-insured employers throughout the United States." It endeavors to ensure that injured workers receive "the right care at the right time from the right provider." It mixes some impressive drug use analysis [see "Massachusetts Prescription Drug Monitoring Program: A Critique," dated August 28, 2012, and an August 13, 2012 post entitled, "Pill Mill in Florida: Getting Off Easy," with case-based articles such as its April 30, 2012 piece, "Louisiana Case: Correlation and Causation". These days the ratio of claimant-oriented blogs to employer-oriented blogs is probably something like 10 to 1. This blog, begun December 20, 2011, is definitely a defense blog to watch.

Georgia Workers' Compensation Lawyer Blog

<http://www.georgiaworkerscompensationlawyerblog.com>

Published by Moebes Law, LLC

Atlanta claimant attorney, Michael Moebes, launched a comp law blog several years ago. Prior to this year, however, his monthly posts, while excellent in terms of quality, were not numerous enough for consideration as a "Top Blog." Moebes has been much more active in 2012 and his blog now joins our annual list. Many of his offerings are practical in approach—see his June 25, 2012 article, "If I'm receiving workers' comp benefits in Georgia, can I still work?". There Moebes analyzed an Ohio case, *McBee v. Industrial Comm'n*, 2012 Ohio 2678, 2012 Ohio LEXIS 1531 (June 19, 2012), in which a claimant was disqualified from disability benefits because he "worked," without direct compensation, for his wife's business. Moebes noted that the decision likely would have been the same in Georgia. Others show his stance as a claimant attorney—see "Overhaul the Georgia Workers' Compensation system? No, no, no. No.," posted March 2, 2012. Virtually all are thoughtful, carefully worded, and worth the read.

the workcomp writer

<http://www.workcompwriter.com>

Published by Thomas A. Robinson

New to the list this year, but hardly new to the world of workers' compensation law, Tom Robinson (a/k/a "the workcomp writer") has been the primary upkeep writer for Larson's Workers'

*Continued, Page 18*

Compensation Law (LexisNexis) since 1993 (for seven years prior to that, he was Senior Research and Writing Assistant to Arthur Larson himself). Robinson is a contributing editor/author for more than a half dozen other comp publications and has offered up hundreds of short pieces for others on a myriad of comp issues in recent years. Launching his own blog in late 2011, Robinson is known for his unusually broad grasp of workers' compensation case law at both a state and national level. He reads more than 2,000 reported decisions each year and highlights the most interesting and bizarre ones in his blog. See, for example, his August 18, 2012 article entitled, “Trip to the Salad Bar Proves Fatal for College Professor,” or his April 6 post, “Spouse’s “Aggressive Surveillance” Cause of Action May Proceed Against Third-Party Administrator”. But cases are not his only interest. His “Oklahoma Opt Out Legislation Fails: A Post Mortem,” filed May 8, 2012, provided a bird’s eye look at the demise of a bill that many thought was sure to pass.

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## “Second Fridays” Free Educational Programs from the NAWCJ

### Upcoming programs:

December 14, 2012 (12:00 p.m. Eastern)

Judge David Langham. The Code of Judicial Conduct, letters of recommendation, personal references, and the potential conflicts of litigation.

### Make Plans Today to Tune-in

Conference call-in codes are available by emailing [judgelangham@yahoo.com](mailto:judgelangham@yahoo.com).

There is no charge for Second Fridays programs. Attendees are responsible for submitting their individual applications for credit in their respective jurisdiction.

## Interesting Recent Discussions on LinkedIn

What is LinkedIn? This is one of the trendy “connection” or “social media” platforms that is currently attracting professionals from a variety of industries, including workers’ compensation. From risk management to legal topics, to medicine and more, there are thousands of professionals engaging each day in conversations about the latest happenings in workers’ compensation. Joining is easy, at [www.Linkedin.com](http://www.Linkedin.com). Some examples of recent conversations:

### “That’s what he said”: Attorney Tips for Seeking Social Media Discovery

From the ABA Section of Litigation  
Employment and Labor Relations Group

### Tennessee and Opioids, Fumble at the Goal Line

Work Comp Insurance Group

### Narcotics Use Mismanaged: Guidelines Ignored

Illinois Workers’ Compensation Group

### Pew Report: By 2050, Hispanics expected to be 29%, Blacks 13%, Asian 9%, Whites 49% of the US population.

Hispanic Issues and Demographics Group

### Bold predictions in light of CA's new lien adjudication process.

Workers’ Compensation Institute Group

### Kansas Appeal Board Decisions Show 2011 Changes are Effective

WCLaw Talk by NWCDN Group

# SAWCA All Committee Conference 2012

Dateline New Orleans. There is a morning chill in the air as the 2012 All Committee Conference (ACC) gets underway. Beignets and King Cake are the fare, as about 100 workers' compensation experts descended on the Hotel Monteleone on Royal Street in the French Quarter. If you have not partaken of either of these gastronomic pleasures, you may go online and order. Unfortunately, they taste different in New Orleans, and as good as the hotel fare is, they frankly taste better still on a sidewalk in the Quarter. The Monteleone, incidentally, has been operating in this location for over 100 years, although the name has changed and there have been renovations and additions, with the Monteleone family in its fourth generation of ownership. In all, it is a grand venue, steeped in history and steps from a dizzying array of foods, drinks, sights and smells. There are many pretenders, but there is but one Big Easy. For the sake of our waistslines, that is perhaps a good thing.

The vexing subject of Medicare Set-Asides (MSA) consumed much of the first day of the program in New Orleans. The Legislative effort has been to curtail the shifting of medical costs for work injuries to the Medicare program. These recent efforts are part of the response to projections that the Medicare "Trust Fund" will be depleted in about 12 years. The fiscal realities of this are subject to differing characterizations, with some contending that Medicare thereafter being able to pay only 87% of their anticipated expenses can be characterized as Medicare being "bankrupt." Others' like the Center for Medicare Advocacy clarify that the inability to meet its commitments does not make Medicare "bankrupt" because funding sources will simply have to be located to meet these demands.

Courts around the country continue to struggle with the various consequences, intended and otherwise, of this effort to end the perceived cost-shifting. Concerns have included whether the Medicare Set-Aside is marital property. Washkowiak v. Washkowiak 2012 IL App (3d) 110174, resolved that to some degree in Illinois last March, with the ex-spouse entitled to a share of the claimant's workers' compensation settlement, including the portion segregated for future medical care in the MSA.

A major focus of the MSA discussion in New Orleans, however, was Hadden v. United States, 661 F.3d 298 (6th Cir. 2011), a case recently reviewed for consideration by the United States Supreme Court. The Court has declined to take up this interesting question, and so the Sixth Circuit conclusion will remain for the time being. In Hadden, a classic situation of comparative negligence presented itself. The plaintiff in this case settled a lawsuit in which ten percent of the liability was assigned to the settling tortfeasor and ninety percent was assigned to "an unidentified motorist." Despite the markedly decreased recovery, the Sixth Circuit affirmed the trial court's conclusion that Medicare was entitled to its full recovery from the reduced recovery by the Plaintiff. This decision is contradicted by the Eleventh Circuit decision in Bradley v. Sebelius, 621 F.3d 1330 (11th Cir. 2010). This conflict is intriguing. The implications for workers' compensation cases are not patent. However, there has traditionally been a desire in many jurisdictions to settle the workers' compensation case when the companion civil case resolves. The Hadden decision may delay such settlements. Furthermore, the mathematics of liability for Medicare reimbursement from the civil case may drive up the value of settlements in companion workers' compensation cases.

Steps away from the Monteleone, just across the street from the Louisiana Supreme Court building, a muffuletta was obtained at the Napoleon House. An unassuming little café with private courtyard, this has been a New Orleans tradition since 1797. The landmark gets its name from a somewhat conspiratorial offer of accommodation by the owner to Napoleon, should he seek refuge during his exile in 1821. The owners assert that "it's a place that suspends you in time." If you have the patience (the service is glacial), it is worth the wait.

Kentucky State Representative John Tilley led a lively and informative discussion on Thursday morning. He is one of the architects of HB1, a compromise which brought Kentucky to the forefront of various state efforts to curtail prescription drug overuse and abuse. Representative Tilley described the legislative process, and outlined the concerns of various interest groups. Comments from the audience suggested public perception was not positive regarding some interest groups. These groups were perceived by attendees as stone-walling the process, in hopes that no bill would survive the legislative effort.

*Continued Page 20*

HB1 is focused upon “pain management facilities. There was a perception that some pain clinics were not providing legitimate medical care, but simply dispensing or prescribing high volumes of opioid medication. A major requirement of the new law provides that only a physician, with an active license, may own a pain management facility. At least one physician-owner or designee must be “on site and practicing medicine” at least 50% of the time. This physician must also meet certain requirements of certification by various specialization organizations.

HB1 also attempts to address this concern by requiring that all pain management facilities must accept private health insurance for services rendered and may only accept payment from the patient, their insurer, spouse, or guardian/custodian. These two requirements seek to define what constitutes a legitimate pain clinic.

Kentucky has implemented a database, the Kentucky All Schedule Prescription Electronic Reporting (KASPER). This program requires that Kentucky pharmacies must report to the database all controlled substances dispensed. The database is available to any “prescriber for medical treatment of existing or prospective patients.” This database allows the physician access to information which their patient does not share, either through inadvertence or to inappropriately seek medication.

Representative Tilley referred to the Kentucky effort as “bipartisan,” noting that there were many conflicting interests involved in HB1. He then corrected himself and said that the better word for the work on this bill was “non-partisan.” He explained that there are legitimate concerns regarding this, and frankly any legislation. There are good reasons to insist that prescription drugs are subject to tighter controls. He noted that statistically more Americans die of prescription drug overdose or interaction than in automobile accidents. Despite the statistical proof of this, he adds that there is speculation that even more die of prescription drugs than are represented in the statistics as family members may be successfully persuading officials in particular cases from listing their family member’s death as drug-related.

A pragmatist, Representative Tilley conceded that HB1 is not a perfect law, and he noted some changes should be considered. He noted that Kentucky has funded the KASPER program and is considering investments in software that could expedite access to the prescription information. Anecdotally, he notes that some physicians are enthralled with the new process and represent that KASPER is already saving lives, but that others have been less eager to embrace this change. As with all change, that bifurcation will likely persist throughout whatever improvements Kentucky brings to the fore in coming sessions.

*Continued, Page 21*

## Washington Joins the Fray over Prescription Related Death

Prescription drugs are a complex issue. The increasing volumes of death related to prescription medication is impacting the country. States are pursuing prescription drug databases and otherwise trying to reign-in pill mills and other dangerous applications of these chemicals.

There has been a significant discussion of this problem, in the more focused context of compensability. Washington State addressed this in November. Department of Labor v. Shirley, No. 66994-0-I, November 13, 2012.

This involves a 2004 work accident, which resulted in low back pain and discomfort. The injured worker received medical care, and the case was “closed” in 2005 “with no award for permanent partial disability.” On the face of it, one might conclude that this was a relatively minor situation. When the claim closed, the records indicate the worker was taking ibuprofen.

Mr. Shirley was working thereafter, but he presented to Dr. Chester Jangala, who prescribed medication for “the effects of the industrial injury.” He prescribed oxycodone, citalopram, alprazolam and amitriptyline. Dr. Jangala testified that he prescribed the amitriptyline “in the distant past.”

Mr. Shirley went to bed on May 2, 2007 and did not awake. The autopsy determined that he had oxycodone, citalopram, desmethylcitalpram, alprazolam, amitriptyline, nortriptyline, carbamazepine, promethazine, caffeine, nicotine and alcohol in his blood at his death. Dr. Jangala testified that there was no evidence of suicide, and found it curious that there were “so many different things at once.” He suggested “I think he took a little bit of everything that he had in the house.”

Mr. Shirley’s surviving spouse filed for workers’ compensation death benefits. The trial court denied the Department’s defense that “Shirley’s simultaneous ingestion of alcohol and prescription medications constituted an intervening activity that broke the chain of causation between his industrial injury and his death.

The Washington appellate Court sustained the compensability of Mr. Shirley’s death. They concluded that the medications were prescribed for the industrial accident and therefore were a proximate cause of death. The opinion includes an excellent discussion of prior analyses of medication and compensability.

Slipping quietly from the Monteleone again, the original Pierre Masperos restaurant (the “original,” avoid the others) offered another foray into the charms of the quarter. Housed in one of the oldest buildings in the Quarter, circa 1788, and conveniently located across the street from Napoleon House, Masperos offered a barbecue shrimp appetizer that is without peer. The shrimp po boy that followed was overflowing and frankly more than two people should consume at a sitting.

The Management Information Systems Committee meeting provided insight into the challenges that electronic billing present. A few states have led the curve on e-billing, and challenges remain for those on the cutting-edge. Louisiana is one of the leaders in this technology, and had the opportunity to present their achievements and challenges on their New Orleans home turf. There were many “take aways” from this presentation. Primary among them is the certainty that no state will have an easy transition to this coming paradigm. One participant suggested that “maybe the fiftieth state” will have a simple transition, having the opportunity to learn from so many others.

This new process will fundamentally change workers’ compensation. However, it will have to be implemented in a way that considers the host of concerns that medical care providers will bring to the table. The International Association of Industrial Accident Boards and Commissions (IAIABC) is an advocate of this change, and they note on their website that e-billing will “reduce cost and friction in the delivery of medical care in workers’ compensation.” Obviously medical providers would be interested in easier submission of their charges, less friction, and presumably more rapid reimbursement. The medical provider concerns, however, will not be limited to workers’ compensation. A medical practice, in most instances, will be providing care to patients under self-pay, group insurance, Medicare/Medicaid, and workers’ compensation. Medical providers will likely recognize that there will be peculiarities for billing within and among these, but will seek processes that are at least not contradictory of other processes. This consistency will benefit the medical provider.

Another notable concern of the Committee is consistency among states. Consistency has been brought to medical care by the International Classification of Diseases (ICD), and the codes which have been assigned to diagnoses. These codes help with classification of medical conditions. Similarly, the medical procedures have been associated with codes, Current Procedural Terminology (CPT). These consistencies among states benefit the payors in the workers’ compensation system, allowing companies to effectively provide services in multiple jurisdictions.

The Louisiana e-billing program is voluntary for medical care providers. The mandatory provisions govern how a provider will e-bill, should she elect to use this process. Conversely, all insurance companies must be able to accept and process e-bills. Thus, the Louisiana model forces the industry to be prepared for e-bills, and seeks to entice the provider’s participation through the incentive of speed and simplicity. Notably, the Louisiana process mandates this readiness for “insurers,” not “payors;” self-insured entities and fund participants are therefore not implicated at the present.

The e-billing process is reminiscent of electronic filing in the litigation process. Attorneys would like programs that are consistent so that they can effectively practice in workers’ compensation systems, state and federal court. There is a frustration among them regarding the vast differences both between and even within systems regarding e-filing. These will be similar frustrations as those voiced by medical providers. Likewise, as adjudicatory systems progress further with electronic publication of decisions, consistency among systems will benefit the recipients of adjudications.

Thursday afternoon included a discussion of various states’ perspectives on the resolution process for medical issues; Dealing with discovery issues, social security records, social media & medical records; electronic filing & service of process issues; bankruptcy of an employer; and MSA’s impact on adjudication of claims and/or resolution of claims. The panel included Judge Meg Hartin of Georgia, Judge John Lazzara of Florida, Louisiana Chief Judge Sheral Kellar, and Mississippi Judges Virginia Mounger and Cindy Wilson. This lively discussion was moderated by Wade McGuffey, the chair of the Adjudication Committee.

A block down the street, next to some rather odd legal society, is Galatoire's restaurant on Bourbon Street. This “grand dame of New Orleans” has been here since 1905. Some of the wait staff may be original. If you have not been, leave ordering to the waiter, they will not steer you astray. The Shrimp Remoulade and Crabmeat Maison are constants though.

The ACC closed, as is traditional, on Friday morning with a general session and wrap-up. This included reports of the various committees’ meetings and foreshadowing of the conference. The 65<sup>th</sup> Annual SAWCA Convention will be July 15-19, 2013 in St. Petersburg Beach, Florida at the famed Don Cesar resort. While the networking opportunities and educational fare will undoubtedly be first-rate, and while the Don Cesar will exude its own charm, living up to the 2012 ACC and the charms of New Orleans will not be easy.



*From the Pages of* **workcompcentral**®

## Comp 'Opt-Out' Works in Texas, May Work Elsewhere

By Bill Kidd, Central Bureau Chief

Allowing businesses to opt out of workers' compensation and become "nonsubscribers" has worked in Texas, could work in Oklahoma and is likely to be considered in other states, workers' compensation consultant Peter Rousmaniere told a national conference in Las Vegas, Nev., on last week.

Rousmaniere, a columnist and author on workers' compensation issues, previewed a 100-page analysis and research report on "The Texas Experience and the Oklahoma Proposal" at the National Workers' Compensation and Disability Conference and Expo at the Las Vegas Convention Center. The project was sponsored by Sedgwick, a claims administration provider.

Rousmaniere said he spent the last six months examining whether the ability to opt out of the Texas workers' compensation system "has produced significant results" that could point the way to "what might be considered the most radical solution to address the decades old problems with the current system."

"The answer – for large employers – is a strong 'yes,'" Rousmaniere said. However, he said, "there are important issues for smaller employers and for workers that need to be resolved before workers' compensation privatization becomes a national movement."

Oklahoma's experience earlier this year with opt-out legislation that ultimately stalled in the state Legislature "shows how some of these problems can be addressed, but the Oklahoma initiative still failed," Rousmaniere said. Expect new legislative proposals to emerge in Oklahoma, and in other states, in the coming years, he said.

Texas doesn't require most employers to carry workers' compensation and allows them to become nonsubscribers – who may offer alternative wage-replacement and medical treatment plans for injured employees. However, nonsubscribers are not required to offer such plans, and the plans don't provide the exclusive remedy protection offered by workers' compensation.

This year, Oklahoma lawmakers considered legislation based on the Texas program – but which would have required employers who opted out of the workers' compensation to provide benefits equal or superior to those provided through the state workers' compensation system.

The proposed legislation was backed by the Oklahoma State Chamber and the Oklahoma Injury Benefit Coalition. The measure died in the Senate after the House of Representatives balked at Senate amendments. Supporters say they will reintroduce similar legislation next year.

"For employers with well-developed employee benefits programs, an opt-out program will fit into the culture of these programs," Rousmaniere said. "The ability to choose private or public workers' compensation means that the employer gets the solution that fits their needs," he said. "Customization of work injury benefits can match the needs of the employer's workforce and location – something that's impossible with statutory workers' compensation," Rousmaniere said.

Rousmaniere said the report's findings include that privatization can:

- Eliminate or substantially reduce major workers' compensation cost drivers.
- Eliminate or reduce employer concerns about fraud and abuse.
- Eliminate expensive, ineffective doctors and medical providers.
- Improve medical treatment and return-to-work rates.
- Eliminate opioid abuse.

*Continued Page 23*

- Improve medical treatment and return-to-work rates.
- Eliminate opioid abuse.
- Reduce loss costs frequently by more than 50%.
- Eliminate "coping with a cumbersome department of insurance and its slow-to-change regulation."

However, Rousmaniere said, "a strong opt-out program requires special expertise especially from workers' compensation administrators, benefits consultants, claims managers, brokers and excess insurers, and medical providers. The old ways won't work."

Another concern is legal issues, "specifically the grand bargain that is at the core of statutory systems throughout the United States," which freed employers from negligence actions through the exclusive remedy of the workers' compensation system, Rousmaniere said.

Rousmaniere said the lack of tort protection for employers and insurers "may be the greatest impediment to privatization," but Texas shows that there are effective ways (such as agreement between employers and employees to arbitrate disputes) to substantially mitigate the risk.

Bill Minick, president of Dallas-based PartnerSource, which provides risk management and human resources services to nonsubscribers, told WorkCompCentral Friday that "non-subscription has been a huge economic driver for Texas for over two decades."

"PartnerSource clients alone have saved over \$1 billion on Texas workers' compensation costs during the past 10 years," Minick said. Minick said states "will continue to reform their existing workers' compensation systems, and the Texas experience proves that such reforms can coexist with and are supported by a nonsubscriber-type alternative."

Texas workers' compensation system participants contacted by WorkCompCentral said they wanted to review the full report before commenting.

Meanwhile, system participants are waiting for new figures on the number of nonsubscribers in Texas. The "Survey of Employer Participation in the Texas Workers' Compensation System" for 2010 showed the percentage of employers that are nonsubscribers decreased from 33% in 2008 to 32% in 2010. The survey, conducted by the Texas Department of Insurance's Workers' Compensation Research and Evaluation Group, shows the non-subscription rate peaked at 44% in 1993 and 1995.

The percentage of Texas employees working for nonsubscribers fell from 25% in 2008 to 17% in 2010. The lowest rate shown in the study was 16% in 2001. The Research and Evaluation Group is to release a new study updating the 2010 study by Dec. 1.

The Insurance Council of Texas says decreases in Texas workers' compensation premium rates – 49% since 2005 – may be luring nonsubscribers into the comp system.

The full report will be available "in about eight days," Rousmaniere said. Rousmaniere said information will be announced on how to obtain copies of the report.

From [www.workcompcentral.com](http://www.workcompcentral.com)



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# THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

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## Confirmed Topics for Next August Include

Evidence for Judges, Professor Mathew Steffey, Mississippi College School of Law.

Judicial Writing, Hon. Gerry Lebovits, New York.

## Thanks to our Judiciary College Curriculum Committee 2013

Hon. Karl Aumann, Maryland

Hon. Stephen Farrow, Georgia

Hon. Sheral Kellar, Louisiana

Hon. James Szlablewicz, Virginia