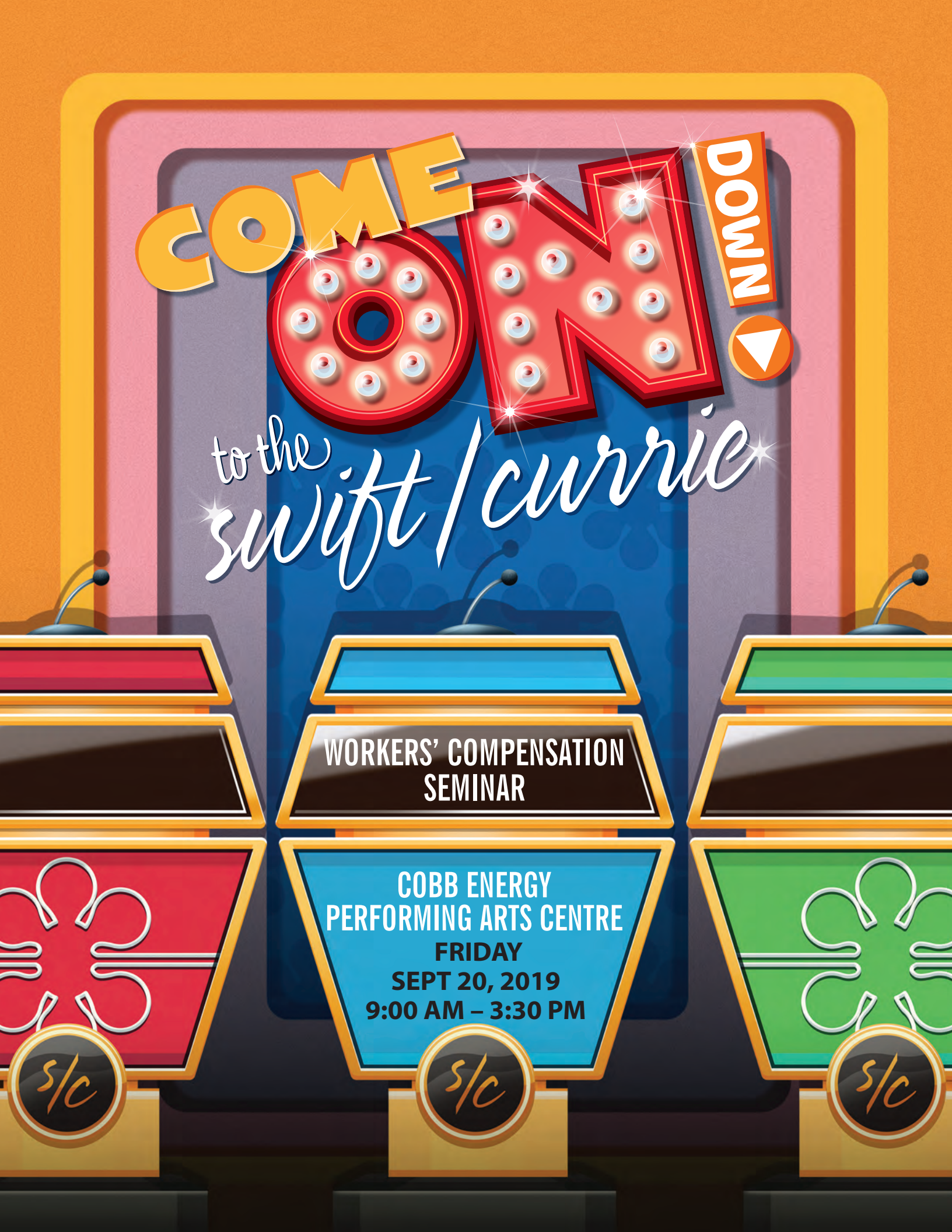
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COME ON DOWN to the Swift Currie Seminar

September 20, 2019

Cobb Energy Performing Arts Centre

COME ON DOWN to the Swift Currie Seminar

Based on more than 50 years of representing clients in Georgia, Alabama and throughout the country, Swift, Currie, McGhee & Hiers, LLP, has evolved into a law firm capable of handling all areas of civil law and litigation. With approximately 150 attorneys, Swift Currie possesses the resources and abilities to tackle the most complex legal problems, while at the same time providing our clients with individualized, prompt and cost-effective service. Our law firm has a wealth of experience across numerous practice areas and our depth of legal talent allows us to tailor such strengths to individual cases. Our firm's philosophy is to provide our clients with creative, aggressive and professional representation of their interests. We also strive to conduct ourselves in a manner consistent with the legacy of our four founding partners. No matter the issue in dispute, Swift Currie has attorneys ready to assist you. We believe we have a well-deserved reputation for high-quality legal services and dedicated attorneys. Finding creative solutions to complex problems — that is our commitment to our clients.

Seminar Agenda

Friday, September 20, 2019

9:30 a.m. – 9:40 a.m.	**Welcome and Introduction** *K. Martine Cumbermack*
9:40 a.m. – 10:00 a.m.	**Playing for "Fast Money" — Best Practices for Claims Involving Traveling Employees** *R. Alex Ficker*
10:00 a.m. – 10:20 a.m.	**Coverage of Volunteers and Interns — Pass? Or Play?** *Cristine K. Huffine*
10:20 a.m. – 10:40 a.m.	**Independent Contractor or Employee — Survey SAYS?!** *Ronni M. Bright*
10:40 a.m. – 10:55 a.m.	**Break**
10:55 a.m. – 11:15 a.m.	**BONUS ROUND — 2019 Case Law and Legislative Update** *Dustin S. Thompson*
11:15 a.m. – 11:35 a.m.	**Spin the Big Wheel — Managing the Posted Panel** *Rusty A. Watts*
11:35 a.m. – 12:00 p.m.	**Don't Fall off a Cliff With Pain Management** *Joseph A. Munger*
12:00 p.m. – 1:00 p.m.	**Complimentary Lunch**
1:00 p.m. – 2:15 p.m.	**Legal Triage**
2:15 p.m. – 2:30 p.m.	**Break**
2:30 p.m. – 2:55 p.m.	**Name Your Price — Figuring out Issues With Average Weekly Wage and Concurrent Similar Employment** *K. Mark Webb*
2:55 p.m. – 3:20 p.m.	**Lessons From My Time at the State Board of Workers' Compensation** *Guest Speaker: Georgia Court of Appeals Judge Elizabeth Gobeil*
3:20 p.m. – 3:30 p.m.	**Seminar Wrap-Up/Door Prizes/Final Exam** *K. Martine Cumbermack*

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Playing for "Fast Money" — Best Practices for Claims Involving Traveling Employees

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R. Alex Ficker represents employers, insurers, self-insurers and third-party administrators in workers' compensation matters, including handling claims before the State Board of Workers' Compensation in Georgia and appellate courts across the state. He provides proactive counsel to ensure his clients' businesses are prepared when there is a workplace injury. He navigates clients through effective legal strategies to ensure success in workers' compensation challenges, including litigating claims, negotiating favorable settlements, advising in investigations and conducting ongoing compliance training for managers and supervisors to understand requirements under the Workers' Compensation Act in Georgia.

Alex's clients range from small mechanic shops to Fortune 500 companies, and he represents businesses across a wide range of industries, including fast food restaurants, grocery store chains, concrete manufacturers, big box retailers and more.

Alex has amassed significant experience in his 13 years of counseling clients on workers' compensation matters and has handled claims valued in the seven-figures.

Knowing that workers' compensation law can seem like its own language, Alex leverages significant prior experience working in the medical field to serve as an effective translator of medical information and legal jargon to ensure his clients fully understand their case, empowering his clients to feel comfortable and included in determining the best legal approach for their business.

Alex provides a hands-on approach in his client service, including site visits as a part of claims investigations to ensure he meets the different parties involved in the case. Through this emphasis on creating and maintaining relationships, his clients benefit from a holistic perspective on matters that include effective two-way communication.

In addition to his extensive experience, Alex ensures he is up-to-date on the latest developments in workers' compensation law. Within the firm, he has served in roles on the firm's annual workers' compensation seminar, internal education committee and client alert committee responsible for alerting clients to important legislative and case law updates.

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Karen G. Lowell practices in the firm's workers' compensation practice area, serving as a champion and advocate for Swift Currie clients involved in workers' compensation claims investigations.

Serving the best interests of employers, insurers and servicing agents, Karen strategically seeks the most cost-effective methods for a successful resolution of claims.

She has received favorable outcomes in hearings before the Georgia State Board of Workers' Compensation, which involved claims related to statutory employers, independent contractors and a fictitious injury. She also prepared a Supreme Court of Georgia petition in an effort to maintain favorable case law for employer and insurers in workers' compensation.

As a trusted and authentic advocate, continual learning and meticulous attention to detail are the foundation of Karen's success and her ability to provide effective counsel to her clients.

Playing for "Fast Money" — Best Practices for Claims Involving Traveling Employees

The final round of the well-known game show, *The Family Feud*, is known as "Fast Money." The host asks two players from the winning team a series of 10 questions each, and then the players must guess how 100 people surveyed most likely answered these questions. The number of responses that match the player's guesses determines the number of points the player receives for the team. If the two players reach a combined 200 points, the entire team wins the grand prize.

As those handling the defense of workers' compensation claims, we are tasked with "playing" our own game of "Fast Money," as we must determine how the State Board will respond to questions related to the compensability of a particular claim. Becoming familiar with "Fast Money" questions related to the often confusing issue of compensability involving traveling employees will place you in the best position to provide the winning answers.

A foundational tenant of the Georgia's Workers' Compensation Act (the Act) is that a compensable claim requires an injury to "arise out of and in the course of employment."[1] In particular, the "in the course of" requirement refers to the time, place and circumstances in which an employee sustained an injury.[2] Thus, if an injury occurs within the period of employment, at a place where the employee reasonably may be in the performance of her duties, and while she is fulfilling those duties or otherwise engaged in something incidental to those duties, the accident will likely be deemed as occurring within the course of employment.[3] Ultimately, whether an injury occurs "in the course of employment" is a question of fact to be determined by the Board.[4]

How we define "traveling employee" also has a bearing on how we approach these issues. Certainly, there are employees who are actually traveling when their accident or injury occurs. Examples include traveling to and from the work place, a meeting, work-associated task, around the area immediately surrounding the work place or while on a break. The focus of this paper is the "traveling" employee in the more traditional, but less literal sense: employees whose job entails traveling away from a designated work place and often involves overnight stays for extended periods of time. The simplest example is the traveling salesperson.

CONTINUOUS EMPLOYMENT

While the days of door-to-door salespeople are generally gone, there are still employees in numerous jobs requiring overnight travel or extended stays away from home, such as truck drivers, project managers, construction workers, flight attendants and consultants. In these instances, the Act affords these employees a greater degree of protection because they are exposed to the "perils of the highways and the hazards of hotels."[5] By the very nature of these individuals' work, a traveling employee is not usually restricted to working or, put another way, being "in the course of employment" on a schedule of hours.[6] Rather, their work includes more irregular, and usually longer, hours than those of employees working in a fixed location. Their duties are left largely to their discretion and acts of ministration, such as eating a meal, are not usually limited to a certain period.[7] As a consequence, the "scope" of employment for these individuals is expanded, such that accidents typically not occuring within the "course of employment" would now fall within this second requirement for compensability.

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1 O.C.G.A. § 34-9-1(4).

2 *Continental Cas. Co. v. Caldwell*, 55 Ga. App. 17, 21, 189 S.E. 408 (1936).

3 *New Amsterdam Cas. Co. v. Sumrell*, 30 Ga. App. 682, 688, 118 S.E. 786 (1923); *Int'l Bus. Machines, Inc. v. Bozardt*, 156 Ga. App. 794, 799, 275 S.E.2d 376 (1980).

4 *Gen. Acc. Fire & Life Assur. Corp. v. Worley*, 86 Ga. App. 794, 796, 72 S.E.2d 56 (1952).

5 *Hartford Acc. & Indem. Co. v. Welker*, 75 Ga. App. 594, 599, 44 S.E.2d 160 (1947).

6 *McDonald v. State Highway Dep't*, 127 Ga. App. 171, 173, 192 S.E.2d 919 (1972).

7 *Id.*

However, determining when this expansion applies often leads to confusion when examining the issue of compensability. Therefore, the following analysis is designed to help you cut through the confusion to reach a rational determination well grounded in the law. Employers can use these helpful hints and practice tips in formulating policies to address these issues before an accident occurs, while claims adjusters can use this information to assist in investigating and handling these claims.

OVERNIGHT TRAVEL

Although it is well established an injury occurring while an employee is traveling to or from work generally does not satisfy the "in the course of" requirement, there are some exceptions to this principle, particularly with regard to traveling employees in the sense used in this paper.[8] These exceptions include situations where an employee is required "to lodge and work within an area geographically limited by the necessity of being available for work on the employer's job site," which the courts have termed the doctrine of "continuous employment."[9] In these instances, and depending on the specific facts and circumstances surrounding an injury and the employee's employment and job duties, a "traveling employee" may nonetheless have sustained a compensable injury "in the course of" her employment due to the expanded duties of this individual's employment.

For example, when a claimant was killed in a hotel fire in Atlanta while he was he was there for a work meeting, the court found his death compensable because his overnight stay was a necessary and normal incident of his employment.[10] Indeed, the courts have found compensable injuries in a wide range of cases under this doctrine based on the expanded scope of employment. In *McDonald v. State Highway Department*, the Court of Appeals of Georgia found the claimant's death was compensable when he died after a fall on his motel's stairs immediately after he had been eating sandwiches, drinking vodka, playing poker and visiting the motel cocktail lounge.[11] Despite the fact such activities would not normally be considered part of an individual's employment, based on the expanded nature of his employment, the accident was deemed to have occurred during the "course of employment."

Furthermore, while most injuries sustained on a scheduled lunch break are not typically compensable, under the doctrine of continuous employment, there is no break in the employment based on the mere fact the traveling employee "is ministering to his personal comforts or necessities . . . to procure drink, refreshments, or foods."[12] While out of town for work, an employee was injured while walking across the street to his hotel after dining alone; his claim was deemed compensable.[13] In this case, the Supreme Court of Georgia held the employee was injured while doing something a traveling employee may reasonably do within the time he is employed and at a place he might reasonably be in performance of that employment.[14] In so holding, the Supreme Court of Georgia found, "The eating of meals, while a pleasure indulged in by a traveling salesman and all mankind, is as necessary to the continuance of his duties as the breath of life; and where his duties take him away from his home, his acts of ministration to himself should not — and we believe do not — take him outside the scope of his employment so long as he performs these acts in a normal and prudent manner."[15] The court went on to state, "While lodging in a hotel or preparing to eat, or while going to or returning from a meal, he is performing an act incident to his employment, unless he steps aside from his employment for personal reasons. Such an employee is in continuous employment, day and night."[16]

This last sentence likely addressed a prior case where the Supreme Court of Georgia determined an employee who traveled to Savannah for a business conference had sufficiently stepped aside from his employment to the extent his accident/injury did not occur within the course of employment. In this case, the reason for the meal and distance the claimant traveled for his meal played a significant role in the outcome.[17]

8 *Wilcox v. Shepherd Lumber Corp.*, 80 Ga. App. 71, 55 S.E.2d 382 (1949).
9 *U.S. Fid. & Guar. Co. v. Navarre*, 147 Ga. App. 302, 304, 248 S.E.2d 562 (1978).
10 *Railway Express Agency, Inc. v. Shuttleworth*, 61 Ga. App. 644, 7 S.E.2d 195 (1940).
11 *McDonald v. State Highway. Dep't*, 127 Ga. App. 171, 192 S.E.2d 919 (1972).
12 *Employers' Liab. Assur. Corp. v. Pruitt*, 63 Ga. App. 149, 151, 10 S.E.2d 275 (940).
13 *Thornton v. Hartford Acc. & Indem. Co.*, 198 Ga. 786, 32 S.E.2d, 816 (1945).
14 *Id.*
15 *Id.*
16 *Id.*
17 *U.S. Fid. & Guar. Co. v. Skinner*, 188 Ga. 823, 5 S.E.2d 9 (1939) (finding an employee left the scope of his employment when he left Savannah for work to go to Tybee Island for a seafood diner and was injured in a car accident on the way to dinner).

In *U.S. Fidelity & Guaranty Co. v. Skinner*, the Supreme Court of Georgia found ministering to oneself goes beyond a task incidental to employment and to the point of becoming a purely personal errand, when an employee traveled 18 miles from Savannah to Tybee Island beach solely to have a "seafood dinner and to see the ocean." Thus, while the doctrine of "continuous employment" affords a broader field of employment, a claim may be denied when the employee exceeds the bounds of his employment and steps outside this field by engaging in a purely personal mission.

Similarly, in *Avrett Plumbing Co. v. Castillo*, the Court of Appeals of Georgia found an employee staying in employer-provided housing did not establish "continuous employment" when his injury occurred on a weekend.[18] In this case, the claimant was paid by the hour for work between Monday and Friday, but was gratuitously allowed to stay in employer-provided housing, which was rented by the week. Due to his financial and transportation situation, the claimant decided to stay over the weekend and was injured while performing a personal errand. In overturning the decision of the administrative law judge (ALJ), the Appellate Division at the State Board found the doctrine of continuous employment did not apply because the claimant was not on call or otherwise paid for his time nor required to stay at the employer-provided accommodations over the weekend, but simply did so for his own convenience. The Court of Appeals found there was evidence to support this award and affirmed the State Board's decision.

HIGHWAY TRAVEL

Although traveling employees who travel perilous highways would fall under both meanings of "travel" discussed, this act alone is not enough to bring an employee under the doctrine of continuous employment. For example, in *Medical Center v. Hernandez*, the employer provided employees with overnight arrangements from Monday to Friday night while they worked at a job site away from home. On Monday morning, two employees traveled from Savannah to Columbus to begin their work week when they were injured just five minutes away from the employer's work site. The court found their injuries were not compensable under the doctrine of continuous employment because these employees had not yet resumed their duties for the employer. However, the court noted that had the injury occurred after they began their duties for the week, such as on Tuesday morning, they may have been afforded broader coverage barring some deviation for a personal mission.[19]

In making compensability determinations for traveling employees in these circumstances, the court's analysis will usually look to several factors, including if the employee was driving a company car, whether he was injured while en route to perform an act contemplated by employment contract or otherwise beneficial to the employer, engaged in a purely personal mission or one of "dual purpose," and whether another defense, such as willful misconduct, is involved.[20]

For example, the court analyzed a case involving both a potential willful misconduct defense and the dual purpose doctrine. In *Parks v. Maryland Casualty Co.*, an employee took a trip from Griffin to Atlanta, Georgia, to have some of his employer's equipment repaired. As part of this trip, he visited some friends who lived in Atlanta.[21] During his time with friends, he had at least one alcoholic beverage, although the court found there was insufficient evidence to show the claimant was intoxicated. On his way home from Atlanta to Griffin, he was killed in an car accident. The court ultimately found his death was compensable under the Act because he had completed the personal portion of his trip to visit his friends and had resumed the business portion of the trip at the time of his accident. Therefore, even where an employee is injured while traveling when he has a dual purpose, the courts will assess the primary purpose of the trip and which aspect of the mission he was engaged in at the time of his injury. Although the claimant's death was found compensable, this case demonstrates the courts are willing to engage in analysis beyond the simple determination of finding a "continuous employment" scenario when a claimant is traveling on a perilous highway.

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18 *Avrett Plumbing Co. v. Castillo*, 340 Ga. App. 671, 798 S.E.2d, 268 (2017).

19 *Medical Ctr. Inc. v. Hernandez*, 319 Ga. App. 35, 734 S.E.2d 557 (2012).

20 *See, e.g., Am. Mut. Liab. Ins. Co. v. Curry*, 187 Ga. 342, 200 S.E. 150 (1938) (holding "when the vehicle is supplied by the employer for the mutual benefit of himself and the workman to facilitate the progress of the work, the employment begins when the workman enters the vehicle and ends when he leaves it on the termination of his labor"); *Roper v. Am. Mut. Liab. Ins. Co.*, 69 Ga. App. 726, 26 S.E.2d 488 (1943) (holding an employee's resulting death in a car wreck was not within the course of his employment when he was using a company car for his personal use to leave a voluntary work convention).

21 *Parks v. Maryland Cas. Co.,* 69 Ga. App. 720, 26 S.E.2d 562 (1979).

In another example, the court found in favor of the employer/insurer when an employee took a detour in a friend's car to purchase cigarettes before finishing his drive to the airport for a business trip to Cleveland, Ohio.[22] Similarly, an injury did not occur in the course of employment when an employee was driving with a non-employee in the opposite direction of the employer's location and showed evidence of intoxication.[23]

As such, it is evident that highway travel alone, which may result in more irregular hours and discretion on how to use one's time, is not alone sufficient to bring an injury within the scope of "continuous employment." This is certainly good news for employers/insurers, but requires a thorough investigation before determining how to handle an accident involving a "traveling employee."

IMPLICATIONS FOR CLAIMS INVESTIGATION AND HANDLING

While the courts make compensability determinations based on the specific facts of a case, there are a few established defenses to "continuous employment" cases. These include where an accident arises from a significant deviation from employment or during a purely personal mission not contemplated as part of the employment. Similarly, an employer/insurer can argue the employee had not yet initiated her duties for the employer or there is another applicable defense contemplated under the Act that bars compensation despite "continuous employment," such as horseplay or willful misconduct.

Therefore, when assessing the compensability of a traveling employee's accident/injury, it is helpful to conduct a thorough investigation of the specific circumstances surrounding the accident and terms of employment. In particular, it is useful to have a geographical understanding of where the claimant was injured and where she was leaving from and headed to at the time of her injury. This may illuminate whether her actions were reasonable and consistent with her job requirements. It will also be helpful to discuss the circumstances of her accident with any witnesses or co-workers to assess ulterior purposes or plans suggesting she deviated from her employment at the time of her injury, as well as provide insight into other potential defenses under the Act. Additionally, it is critical to interview the employer to determine the specific policies, particularly those in writing, outlining the employee's duties or prohibiting certain activities and whether the claimant is provided with transportation, housing and any per diem funds. Thus, it is important to ask a variety of detailed questions of all parties to investigate the circumstances surrounding the employment and the accident before making a determination of compensability.

RECOMMENDATIONS AND PRACTICAL CONSIDERATIONS

While the compensability of a work injury for a traveling employee is an inherently factual determination, there are certainly ways to reduce exposure in these scenarios. For example, for employees staying overnight at hotels, one factor the court will look at in assessing the compensability of an injury is whether the employer was paying for the employee's overnight expenses, although this is not a determinative factor.[24] A court may find it persuasive if the employer explicitly limits the employee's receipt of wages and overnight expenses to working hours and weekdays, rather than throughout the weekend, if the employee only works Monday through Friday. Additionally, if you know in advance an employee will be at a specific, remote job site for an extended period of time, it is advantageous to have a panel of physicians for that location to limit potential treatment with an unknown physician who may be unfamiliar with either Georgia workers' compensation patients or your business practices, such as the availability of light duty. Similarly, it is worthwhile to consider planning ahead for the possibility of individuals requiring light duty positions that will allow the employee to remain at the job site, earning income and securing treatment.

The potential coverage of employment for a traveling employee is broader than that of your average 9-to-5 employee. As a result, the courts apply a broader understanding of the employment to determine if an injury for a traveling employee is compensable. Although this determination is very fact intensive, the employer/insurer can use the above principles and practices to effectively and efficiently investigate and handle claims.

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22 *Sandford v. Univ. of Ga. Bd. of Regents*, 131 Ga. App. 858, 207 S.E.2d 255 (1974).

23 *Travelers Ins. Co. v. Curry*, 76 Ga. App. 312, 45 S.E.2d 453 (1947).

24 *See Ry. Express Agency v. Shuttleworth*, 61 Ga. App 644, 7 S.E.2d 195 (1940).

Coverage of Volunteers and Interns — Pass? Or Play?

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Cristine Huffine represents employers, professional employment organizations, insurance companies, servicing agents and self-insureds in workers' compensation claims ranging from minor injuries and occupational diseases to more significant, catastrophic matters with complex medical implications. Her clients include small businesses and Fortune 500 companies alike, including national retailers, restaurants, food and beverage companies, and trucking and logistics services, as well as various school board associates and governmental entities.

Cristine regularly defends clients in multimillion-dollar claims, leveraging her extensive experience and a deep understanding of the medical issues at play to obtain favorable results for her clients. In one catastrophic brain injury matter, for example, she negotiated a settlement for more than $1 million less than the original claim.

Cristine collaborates with clients to identify effective and efficient solutions with a focus on the client's business goals and bottom line. Whether positioning the client for a favorable settlement negotiation or aggressively litigating a claim before an administrative law judge (ALJ), she serves as a trusted business partner when identifying creative solutions for complex disputes.

Cristine's personal and professional experience empowers her with an in-depth understanding of the medical and business considerations involved with workplace injury claims. Cristine effectively works with physicians to develop a full understanding of a claim, including everything from basic to highly specialized injuries. Before entering law school, Cristine worked various jobs in the restaurant and retail industry, which lends her a holistic perspective of her clients' operational practices when considering legal issues.

Prior to joining Swift Currie, Cristine practiced at other major national law firms with offices in Atlanta, focusing on employment and labor law, as well as environmental law. Cristine also practiced in Pennsylvania, where she participated in a precedent-setting products liability case. She previously served as a law clerk for the Honorable Sheryl Ann Dorney for the Court of Common Pleas in the 19th Judicial District in York, Pennsylvania. As a law clerk, Cristine authored several opinions that were published, including an opinion involving a major snack food corporation embroiled in a family battle over ownership rights. While in law school, she interned at the Pennsylvania Attorney General's Office in the Tort Litigation Section.

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Monica Goudy practices in the area of workers' compensation where she regularly represents employers, insurers, self-insurers and third-party administrators in matters involving workers' compensation claims throughout Georgia, including catastrophic and fraudulent claims.

Monica is not defined by one specific industry or type of case. She makes a point of staying current on issues that impact her work for a wide spectrum of clients, from construction and hotels to waste management and lumber yards. She is a skilled negotiator and a creative problem solver.

Prior to launching her career as a defense attorney, Monica specialized in environmental litigation as an associate for another Atlanta law firm. She also represented injured workers in Atlanta as a claimant's attorney. The opportunity to practice law in other areas has provided a valuable perspective, especially in terms of creative strategy in developing litigation plans and resolving disputes. She also learned a European style of conflict resolution from living in Italy for four years prior to joining Swift Currie.

During law school, Monica worked as a law clerk for the Honorable Steve C. Jones and a Georgia Superior Court Judge for the Western Judicial Circuit. Prior, Monica taught English and literature in the Czech Republic.

Coverage of Volunteers and Interns — Pass? Or Play?

At the outset of every workers' compensation claim is the seminal question of whether there was an employment relationship at the time of the alleged injury. O.C.G.A. § 34-9-1(2) defines an "employee" as every person in the service of another under a contract of hire or apprenticeship. This code section provides the elements of an actual employment relationship: there must be a contract of hire or apprenticeship between the worker and business, either written or implied, and the worker must be in the service of that business.[1]

In determining whether an employment relationship exists, the issue of control over the time, manner and method by which the employee performed her duties is critical. This is a factual determination. Any doubt about whether an employment relationship exists must be resolved in favor of the alleged employee.[2] More and more, we are seeing variations of the classic employment relationship between an employer and employee in a less defined relationship involving volunteers and interns/trainees and their "place of work." The following will consider scenarios that fall in this gray area of the unpaid worker and how the courts make sense of on-the-job injuries occuring in this capacity.

VOLUNTEERS

Let us first consider a basketball coach who was injured at a charity basketball game at the school where he teaches. He and the entire school faculty were given three options for volunteering at the fundraiser: they could play in the game, supervise students in the gymnasium or monitor students in the school cafeteria. They had to volunteer in the fundraiser in some capacity and were not allowed to go home.

The coach volunteered to play in the basketball game and, within a few minutes of the game, he came down awkwardly on his leg and twisted his knee. Was he an employee of the school or a volunteer for the March of Dimes at the time of his injury?

Recreational or social activities are within the course of employment, and thus subject to the Workers' Compensation Act (the Act) if (1) they occur on work premises during a lunch or recreation period as a regular incident of employment; (2) employee participation is required, either expressly or by implication; or (3) the employer derives a substantial benefit from the event beyond the improvement in employee health and morale that is common to all kinds of recreational or social activities.[3] According to the State Board, the basketball coach was an employee (the accident was therefore covered by the Act) because he participated in a student/faculty basketball game, which was an employer-authorized or permitted activity, in an authorized place and during an authorized time.[4]

Similarly, in *Parker v. Travelers Insurance Co*., the employee was employed as a truck driver, dockman and part-time mechanic.[5] During slow periods, he was allowed to work on his personal car. While working on his personal car during a slack period, he was killed when a jack slipped and the car fell on him. The Board denied the widow benefits and the trial court affirmed. On appeal, the court reversed the order of the Board denying compensation on the basis that the employer knew the employee used slack time to work on personal projects and condoned or permitted such activity. The employee was required to remain on the premises during slack periods, and the injury occurred during a slack period while engaged in an authorized activity, in an authorized place and during an authorized time. Therefore, the injury arose out of and in the course of employment.

The claimant has a harder time proving coverage under the Act when the recreational or volunteer activity takes place *off* premises and results in an injury. In *Crowe v. Home Indemnity Co*., the claimant was injured at softball practice with her team from Golden State Food (her employer). The team wore uniforms with the initials GSF on them and represented the employer at games and practices, but the employees paid for the uniforms themselves and the employer did not derive any benefit from the softball team. The Court of Appeals held the Board was authorized to find the injury did not arise out of and in the course of the claimant's employment.[6]

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1 O.C.G.A. § 34-9-1(2); *Goolsby v. Wilson*, 150 Ga. App. 611, 258 S.E.2d 216 (1979); *George v. Ashland-Warren, Inc*., 254 Ga. 95, 326 S.E.2d 744 (1985).

2 *Atlas Construction Co., Inc. v. Pena*, 268 Ga. App. 566, 602 S.E.2d 151 (2004).

3 *Pizza Hut of Am. v. Hood*, 198 Ga. App. 112, 400 S.E.2d 657 (1990).

4 SBWC Claim No. 2015013761, Trial.

5 SBWC Claim No. 2015073761, Trial.

6 145 Ga. App. 873, 245 S.E.2d 75 (1978).

UNPAID INTERNS

The controlling factors for an employment relationship include one person in the service of another and such person under a contract of hire or apprenticeship.[7] Arguably, interns may look slightly more like employees than volunteers because they are operating under an apprenticeship of sorts, but there is still a nebulous employment relationship. Assume a claimant was an unpaid intern at a psychiatric facility when she was injured. Her university required on-the-job training or field work as part of the course and helped her obtain the internship. She slipped and fell at the facility when she was helping a patient. Is she an "employee" of the psychiatric facility for purposes of workers' compensation?

Some factors the State Board considered in finding the unpaid intern at the psychiatric hospital did not meet her burden of proving she was an employee of the hospital are (1) the internship was required for the claimant to earn her degree and, thus, the claimant benefitted from this internship; (2) the interview process for interns differed from the interview process for employees; (3) this was a formal program with written agreements stating interns were not considered employees of the employers where they were placed; (4) there were prerequisites for the internships and educational requirements associated with the internships including time and activity logs, assessments and seminars; (5) the university retained the right to discharge interns; (6) the claimant wore a specific name badge identifying her as an intern, further separating her from employee status and making it clear to those who encountered her at the hospital that she was not an employee; and (7) students were only considered for internships after a memorandum of understanding/affiliation agreement was established with the students' universities.[8]

In other jurisdictions, in *Anderson v. Northwestern Memorial Hospital*, the Minnesota court held that a student nurse is not an employee of the hospital where she was assigned to work because the enrolling hospital continued to supervise her training and could withdraw her from the assignment.[9] Likewise, in *Krause v. Trustees of Hamline University*, the Minnesota court held student nurses were not employees of the hospital where they were assigned to work because the assigning hospital did not relinquish control and retained the right to determine satisfactory compliance with the curriculum.[10]

The rubric in these decisions is whether the employer controlled the time, manner and method of work of the claimant who happened to be an unpaid worker at the time of injury. Unlike the nursing interns in Georgia and Minnesota, a job training candidate was found to be an employee of the program in *Tommy Nobis Center v. Barfield*.[11] In that case, the handicapped claimant was in a job training program in which he received classroom instruction and on-location evaluation in exchange for nominal remuneration and the hope of a future job. Noting the question of the employment relationship is a factual determination, the court found the employer had assumed the right to control the time, manner and method of work as the claimant was under the center's supervision even though he was still a trainee.[12] The center also benefited from the claimant's work because outside sources paid for the work the claimant performed.[13]

Notably, the claimant in *Tommy Nobis Center* was continuously supervised and controlled by the employer and paid for his efforts. The court held he was an employee within the meaning of the Workers' Compensation Act and entitled to workers' compensation benefits for his injuries at the center. By contrast, in *North v. Floyd County Board of Educ*ation, a prospective bus driver who was injured during training failed to establish an employment relationship because she had not been guaranteed future employment and did not receive any compensation during training.[14] The court held there was no implied contract and the extent of control over the claimant's training was fact intensive and a question for the administrative law judge (ALJ) as the fact finder.

7 O.C.G.A. § 34-9-1.
8 SBWC Claim No. 201005066, Trial.
9 40 N.W.2d 442, 229 Minn. 546 (1949).
10 68 N.W.2d 124, 243 Minn. 416 (1955).
11 187 Ga. App. 394, 370 S.E.2d 517 (1998).
12 *Id.* at 396.
13 *Id.*
14 212 Ga. App. 593–94, 442 S.E.2d 809 (1994).

Money is not the only factor separating an intern from an employee. In fact, monetary wages are not required in Georgia to establish an employment relationship. In *Smith v. Western & A.R. Co*, the claimant was "an apprentice fireman" for the purpose of learning the duties of a fireman and gaining experience and knowledge of the work to render him competent to act as a regular fireman. He was killed while he was working as an unpaid apprentice, and the Supreme Court of Georgia held the trial court erred in not instructing the jury on the appropriate law on the subject of a railroad company and its employees.[15]

Likewise, in *Housing Authority v. Jackson*, the Court of Appeals rejected the argument that an agreement to serve without compensation failed to support a contract of hire. The main test of employment is whether the employer is granted or assumes the right to control the time, manner, means and method of executing the work and whether the employer has the right to discharge the individual.[16] In that case, the claimant was injured while performing his duties as acting executive director of the Housing Authority of the City of Cartersville. Even though this was a full-time position for which a permanent executive director would later receive an annual salary of $49,500, the claimant agreed to serve with no compensation. During his second term as acting executive director, he was driving an Authority-owned car on Authority business when he was severely injured in a traffic accident. The question of whether an employee-employer relationship exists within the meaning of the Workers' Compensation Act is governed by the same principles that determine the issue under common law.[17] The main tests are whether the master is granted or assumes the right to control the time, manner, means and method of executing the work, and whether the master has the right to discharge the servant.[18] The right to control may be inferred from the right to discharge. Another factor is whether the master receives a benefit from the claimant's services.[19] Under this test, the claimant in *Housing Authority v. Jackson* was found to be an employee because he was subject to discharge and control by the Authority's Board of Commissioners, who would otherwise have to pay $49,500 per year for comparable services.

An employment relationship will be inferred under the Act even though no compensation is paid where one receives valuable services from another and retains the right to control and discharge the one performing the services. In *Howard Sheppard, Inc. v. McGowan*, the driver applied for a job with the employer.[20] He was required to pass a road test to demonstrate his driving abilities. He failed the test two days in a row, but the employer gave him another chance. The employer assigned him a truck and told him to haul stone and gravel to a site while a supervisor followed him. On the driver's third attempt to pass the driving test, he was struck by a train and killed. The driver's widow was awarded death benefits with the trial court affirming the award. On appeal, the court affirmed the decision. The court found that a master-servant relationship existed and held the company received payment for the three loads the driver hauled. Moreover, the court concluded the company had control over the driver.

PRACTICAL APPLICATION

Consider a claimant who accepts a light duty job placement at a thrift store under the WC-240a process. Without going into the mechanics of the placement, what is the practical application if the claimant is injured at the nonprofit thrift store?

We encountered this scenario with a claimant's attorney who preemptively sent a letter to the thrift store informing the owner the claimant had not *volunteered* to work at the facility. Rather, she was required to work there or her workers' compensation benefits would be suspended. Opposing counsel informed the nonparty she could be liable as a nonprofit supervisor if the claimant aggravated her condition while working at the facility. The claimant would not be signing a waiver or general release according to her attorney. He relied on *Coe v. Carroll & Carroll* for the proposition that the nonprofit supervisor could be held liable in tort or under workers' compensation if she has not contracted with the employer about these issues.[21] After thoroughly alarming her, opposing counsel wanted to know if the thrift store had workers' compensation insurance and general liability coverage.

15 134 Ga. 216, 67 S.E.818 (1910).
16 226 Ga. App. 182, 486 S.E.2d 54 (1997).
17 *Farmer v. Ryder Truck Lines*, 245 Ga. 734, 266 S.E.2d 922 (1980).
18 *Golosh v. Cherokee Cab Co.*, 226 Ga. 636, 638 (176 S.E.2d 925) (1970).
19 *Mansfield Enter. v. Warren*, 154 Ga. App. 863, 270 S.E.2d 72 (1980).
20 137 Ga. App. 408, 411, 224 S.E.2d 65 (1976).
21 308 Ga. App. 777, 709 S.E.2d 324 (2011). The *Coe* decision is premised on tort law and negligence, which is inapposite in workers' compensation.

The job placement did not last long enough to risk injury of any kind at the thrift store, but this scenario raises good points to conclude this discussion. First, as opposing counsel aptly noted, the claimant was not a volunteer at the thrift store. If we litigated this issue, the court would likely find she accepted the position (albeit a brief placement) as an employee and received wages in exchange for her services, thereby making her an employee. Presumably, the nonprofit supervisor controlled the time, manner, means and method of executing the work and probably had the capacity to fire her. However, the insurance carrier paid her wages and, more than likely, if she were injured at the nonprofit, the insurance carrier's workers' compensation policy would cover her injuries.

Given the complexity of these cases, we invite you to contact your favorite Swift Currie attorney to discuss any questions you may have concerning the employment relationship in your claims and help identify defenses in these claims.

Independent Contractor or Employee — Survey SAYS?!

By Ronni M. Bright

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Ronni Bright represents a wide array of employers, insurance providers and third-party administrators in risk management and workers' compensation litigation.

Ronni masterfully handles all aspects of litigation and trial for her clients, having practiced in multiple jurisdictions. Ronni's clients include a national staffing agency and employers in the retail, trucking, health care, hospitality and construction industries

As an example of Ronni's focused and zealous advocacy on behalf of her clients, Ronni succeeded in defending against a motion for change of physician by quickly ascertaining relevant facts and law. Her successful defense resulted in the employer maintaining control over medical benefits. Additionally, she secured an order from the State Board following a full trial in which the employer was not ordered to authorize a spinal cord stimulator recommended by a referral physician.

Ronni quickly assesses a client's defense needs and takes the appropriate action. With her effective and timely communication, Ronni has resolved claims within 60 days of the referral.

Ronni's calm and focused demeanor and her tenacious execution help inspire trust from her clients. Ronni defines excellence as understanding the law and empowering clients with that understanding. They are confident in Ronni's ability to accomplish what may seem like the impossible to achieve their desired outcome.

Independent Contractor or Employee — Survey SAYS?!

THE ACT'S DEFINITION OF "EMPLOYEE"

The Workers' Compensation Act (the Act) provides a very extensive definition of "employee." However, succinctly put, an employee is any person in the service of another under any contract of hire or apprenticeship, written or implied, and whose employment is in the usual course of the trade, business, occupation or profession of the employer.[1] The key determinative factor in the Act's definition of employee is the character of the work done, not the contract of employment. A worker is afforded the protecting of the Act as an employee when she is employed by a business with three or more employees who are regularly in service of the same business within the state of Georgia.

There are a number of individuals who are excluded from the Act's definition of "employee." Specifically, farm laborers, railroad workers, domestic servants and employees conducting work not in the usual course of the employer's business.[2]

COMMON LAW INDEPENDENT CONTRACTOR STATUS

In addition to workers statutorily precluded from the Act's definition of "employee," O.C.G.A. § 34-9-2(e) further provides a three-part criterium by which a person or entity qualifies as an "independent contractor" and not an "employee." First, there must be a contract to create an independent contractor relationship. The contract may be oral or written and either implied or express. The second requirement is the individual controls the time, manner and method of the work to be performed. Finally, if there is a set price charged for compensation as opposed to a salary or hourly pay, that is evidence of an independent contractor relationship.

Whether an injured worker meets each of these criteria is a question of fact determined by the administrative law judge (ALJ) on a case-by-case basis. The legal precedent set by Georgia case law provides guidance on the factors heavily weighed by the Board and courts when determining whether an individual is an independent contractor versus an employee. In circumstances where a worker is paid by the job, required to account for the payment of his own taxes, issued a 1099 by his alleged employer for doing so, uses his own tools, directs his own schedule and determines how best to perform his work, the courts have found that the worker is an independent contractor and not an employee.[3]

RELEVANT FACTORS FOR DETERMINING COMMON LAW INDEPENDENT CONTRACTOR STATUS

There are a number of factors courts look to when determining whether a party is an independent contractor. The most obvious is the contract entered into by the parties. The intent of the parties to create an independent contractor relationship is best demonstrated with an express written contract that explicitly sets forth the parties' intent. Yet, even without a written contract the parties' intent can be demonstrated by other means, such as federal income tax forms identifying the employee as "self-employed."

Courts have historically considered several factors to determine who controlled the manner and method of the work. The right to control the method and manner of the work means the right to instruct an individual in every detail as to exactly how he goes about performing the work to be done.[4] This includes who furnishes the tools and equipment for the work performed, whether the individual has a right of control over his own employees, whether the business of the individual is separate and distinct from the employer's business and whether the individual is free to work for other individuals rather than having to work exclusively for the employer.

1 O.C.G.A. § 34-9-1(2).

2 O.C.G.A. § 34-9-2 (a).

3 *Moss v. Central of Ga.*, 135 Ga. App. 904, 219 S.E.2d 593 (1975); *Simpkins v. Unigard Mut. Ins. Co.,* 130 Ga. App. 535, 203 S.E.2d 742 (1974); *Clements v. Ga. Power Co.,* 148 Ga. App. 745, 252 S.E.2d 635 (1979); *Tect Constr. Co., Inc. v. Frymyer*, 146 Ga. App. 300, 246 S.E.2d 334 (1978).

4 *RBF Holding Co. v. Williamson*, 260 Ga. 526, 397 S.E.2d 440 (1190); *State v. Goolsby*, 191 Ga. App. 161, 381 S.E.2d 299 (1989).

Of critical importance with respect to the right to control is what say, if any, the employer has over the subordinate's functions. The mere fact the alleged employer may have had a right to require certain definite results in conformity with the contract will not, by itself, convert the relationship into an employment one.[5] However, if the alleged employer has the ultimate authority to control the time, manner and method of the work, the question of whether the alleged employer actually exercises that right is not relevant.[6] It is the employer's "right to control," rather than the actual exercise of control, determining where an employment relationship existed at the time of the accident.[7]

Additionally, the courts consider the method of payment and length of time of the work. If an individual is paid a set price per job, as opposed to being paid an hourly rate or salary, the method of payment evidences an independent contractor, rather than an employment relationship. Further, where an individual works a shorter period of time for the alleged employer and with agreed upon, definite begin, continuance and end dates, this evidences an independent contractor relationship.[8]

Other relevant considerations include the alleged employee's skill level and control over subordinates, whether the alleged employee's business can be distinguished from that of the alleged employer and whether the alleged employee works for a multitude of other unrelated businesses, firms or persons. The more specialized the skill of the alleged employee, the more likely he will be found to be an independent contractor.[9] Further, where the alleged employee has unfettered, direct control over the hiring and firing of his subordinates, this too suggests he is an independent contractor.[10] Also, where the alleged employee's line of business differs from that of the alleged employer, this suggests an independent contractor relationship.[11] Certainly, where the alleged employee provides his expertise and skill to various unrelated businesses for an agreed upon price, this indicates he is an independent contractor.[12] Again, the question of whether an individual is an employee versus an independent contractor is one of fact that is ultimately decided by the ALJ. The various factors available for the judge's consideration are not dispositive of an independent contractor relationship. However, they are indicative of the relationship.

STATUTORILY DEFINED INDEPENDENT CONTRACTORS

There are several occupations statutorily deemed as independent contractors. Those include product resellers, agricultural service providers, owner-operators, a carrier of printed materials and real estate brokers. The one common prerequisite in each of these cases (except for an owner-operator)[13] is the existence of a written contract specifying all services are to be provided as an independent contractor.[14]

STATUTORY EMPLOYERS: LIABILITY WITHOUT EMPLOYMENT RELATIONSHIP

Pursuant to O.C.G.A. § 34-9-8, in certain circumstances, even if there is no employment between an injured worker of a subcontractor and the principal or general contractor, the injured worker shall have the right to recover workers' compensation benefits for a compensable injury from a general contractor, intermediate contractor or higher level subcontractor in its hierarchy of subcontractors who contracted work out to the employee's immediate employer. In such a circumstance, the injured worker would be considered a "statutory employee" of the general contractor, intermediate contractor or higher level subcontractor in the same hierarchy. In order for statutory "employment" to exist under O.C.G.A. § 34-9-8, it must be shown (1) there is a proper "contractor" relationship between the injured individual's immediate employer and the defendant (i.e. general contractor); (2) the defendant is subject to the Workers' Compensation Act; (3) the individual's injury

5 *Am. Fire & Cas. Co. v. Davidson*, 116 Ga. App. 255, 157 S.E.2d 55 (1967); *Sears, Roebuck & Co. v. Poole*, 112 Ga. App. 527, 145 S.E.2d 615 (1965).
6 *Golosh v. Cherokee Cab Co.,* 226 Ga. 636, 176 S.E.2d 925 (1970); *Savannah Elec. & Power Co. v. Edenfield*, 118 Ga. App. 531, 163 S.E.2d 366 (1968).
7 *Miller v. Kimball*, 163 Ga. App. 435, 294 S.E.2d 681 (1982).
8 *Malcom v. Suddeth*, 98 Ga. App. 674, 106 S.E.2d 367 (1958); *Travelers Ins. Co. v. Moates*, 102 Ga. App. 778, 117 S.E.2d 924 (1960).
9 *Harris v. City of Chattanooga*, 507 F. Supp. 365 (N.D. Ga. 1980); *Moss v. Central of Ga. R.R.,* 135 Ga. App. 904, 219 S.E.2d 593 (1975).
10 *Simpkins v. Unigard Mut. Ins. Co.,* 130 Ga. App. 535, 203 S.E.2d 742 (1974).
11 *RESTATEMENT (SECOND) OF AGENCY* § 220(2)(b), (h) and (j).
12 *Burnett v. King*, 88 Ga. App. 771, 77 S.E.2d 772 (1953).
13 An owner operator's status as an independent contractor is statutorily prescribed by O.C.G.A. § 40-2-87.
14 O.C.G.A. § 34-9-2 (a) & (d).

occurred on, in or about the premises the contractor executes work or otherwise controls or manages; and (4) the injured individual has employee status. The purpose of O.C.G.A. § 34-9-8 is to deter contractors from subletting to irresponsible and uninsured subcontractors.

BURDEN OF PROOF: ESTABLISH EMPLOYMENT RELATIONSHIP

It is not the employer or insurer's burden to refute an individual's alleged employee status. Rather, the employee must prove the existence of an employment relationship.[15] Nonetheless, employers and insurers should have their evidence ready when an employment relationship is disputed. While the Act was amended in 1994 to require the provisions of the Act be interpreted and applied impartially to employees and employers alike, the Act retained its liberal construction requirement with regard to determining whether an employment relationship exists. As such, the Act "shall be liberally construed only for the purpose of bringing employers and employees within the provisions of this chapter and providing protection for both."[16] Furthermore, because a determination of employment status is an issue of fact (and not law) to be determined by the ALJ, so long as the judge's finding of employment is supported by any competent evidence, the finding must be affirmed by any appellate court reviewing the case.[17]

CONCLUSION

The determination of employment status is very fact intensive. While the employee bears the burden of establishing employment status, employers and insurers are wise to maintain an awareness and record of relevant factors to show the existence of an independent contractor relationship given the beneficent nature of the Act and its application in determining whether an employment relationship exists. To that end, below is a list of factors to consider when determining employment status.

- Contract (written or oral, expressed or implied) showing intent of parties to enter independent contact relationship
- Who controls time, manner and method of the work performed
- Who is the individual paid
- Length of time individual has performed work for alleged employer
- Who provides tools and equipment for work
- Who schedules hours worked
- Who has direct control over alleged employee's subordinates
- Type of business conducted by alleged employee
- When and where the alleged accident occurred

The above is not an exhaustive list; however, it is a good start when faced with investigating employment status. As you review a contract, look to see if the contract includes any terms the ALJ may find affords the general contractor control over the independent contractor, such as a noncompete clause. An ALJ may easily interpret a noncompete clause as the general contractor's exercise of control over the independent contractor, such that he is found to be an employee. Also, closely examine how long the parties have worked together. If the independent contractor and general contractor have worked together for an excessive period of time and the independent contractor has not worked for any other business during that time, the ALJ may find this indicates an employment relationship. Take note of where the actual accident took place as well. Specifically, be clear on whether the accident took place while the employee was on the job site versus traveling from his home to meet the general contractor at the job site. Ultimately, there is no foolproof way to prove the existence of an independent contractor relationship. Rather, proving this requires the ALJ to weigh and interpret an intense showing of facts. As such, when conducting your investigation and making this fact-intensive analysis, feel free to contact a Swift Currie attorney to assist you with any questions or concerns you may have.

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15 *Cash v. Am. Sur. Co.,* 101 Ga. App. 379, 114 S.E.2d 57 (1960); *Ins. Co. of N. Am. v. Lamb,* 56 Ga. App. 492, 193 S.E.2d 76 (1937).

16 O.C.G.A. § 34-9-23.

17 *Golosh v. Cherokee Cab. Co.,* 226 Ga. 636, 176 S.E.2d 925 (1970).

BONUS ROUND — 2019 Case Law and Legislative Changes

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Dustin S. Thompson represents clients in workers' compensation claims with a focus on insurance defense litigation.

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Dustin has tried cases in front of administrative law judges (ALJ) and argued in front of the Appellate Division of the State Board.

BONUS ROUND — 2019 Case Law and Legislative Changes

GEORGIA COURT OF APPEALS OUTLINES AND AFFIRMS "CLEARER BRIGHT-LINE RULE" INTERSECTION OF SCHEDULED BREAK EXCEPTION AND INGRESS/EGRESS RULE

In *Frett v. State Farm Employee Workers' Compensation*, the Court of Appeals clarified whether the ingress and egress rule applies to the scheduled break exception.[1] The ruling in *Frett* affects two components of analyzing whether an accident arises out of and occurs in the course of the employee's employment. Generally, the scheduled break exception holds an employee is not in the course of her employment while on a scheduled break given the employee is free to use the time as she chooses, even if she remains on the employer's premises. The ingress and egress rule indicates an employee remains in the course of her employment for a reasonable period of time while the employee is on the employer's premises preparing to begin or end work.

The Court of Appeals' full bench heard the arguments in *Frett v. State Farm Employee Workers' Compensation*. Swift Currie partner Chad Harris represented State Farm. The Court of Appeals noted a clearer bright-line rule is needed regarding the application of the scheduled break exception and its intersection with the ingress and egress rule. The Court of Appeals concluded the ingress and egress rule does *not* apply to the scheduled break exception. The Court of Appeals further disapproved its previous holdings to the contrary where it had extended the ingress and egress rule to cover cases where an employee was injured while leaving and returning from a regularly scheduled break.

In *Frett*, the Court of Appeals found the following undisputed facts. Frett worked as an insurance claims associate in State Farm's leased suite in a shared office building. Frett had a mandatory, unpaid 45-minute lunch break every work day. The lunch break was scheduled by an automated system that staggered the breaks to ensure an adequate amount of associates were available to handle calls. Each morning, Frett would log in for the day and assess her schedule, which would include the time of her lunch break. At the time of her scheduled lunch break, Frett would log out of the phone system. She was free to do as she pleased on her break and able to leave the office. Frett was not expected or asked to work during her lunch breaks.

On the date of her accident, Frett logged out of the phone system at the assigned time and walked to the break room within State Farm's suite to microwave the food she intended to eat for lunch. As she began to exit the break room to take her lunch outside the building, she slipped on water and fell. Frett was still inside the break room at the time of her fall. Thereafter, she pursued a claim for workers' compensation benefits.

At the trial level, the administrative law judge (ALJ) awarded Frett medical benefits and temporary total disability (TTD) benefits relying upon the Court of Appeal's decision in *Rockwell v. Lockheed Martin Corp.*[2] In *Rockwell*, the Court of Appeals applied the ingress and egress rule to an employee departing for a scheduled lunch break and, as a result, awarded benefits. The Appellate Division reversed the ALJ's award and concluded Frett's injury did not arise out of her employment because it occurred on a regularly scheduled break while pursuing a purely personal matter.

Within Judge Brown's majority opinion, the Court of Appeals indicated the existence of a conflict in the case law regarding the intersection of the ingress/egress rule and the scheduled break exception. Based on the Court of Appeals' rulings prior to *Frett*, an employee choosing to leave the employer's premises during a regularly scheduled break who was injured while departing or returning from the break was found to have sustained injuries arising out of and in the course of employment. On the other hand, an employee who chooses to remain on the employer's premises during a regularly scheduled break and is injured at the beginning or end of the break was found to have injuries that do not arise out of and in the course of employment.

1 *Frett v. State Farm Employee Workers' Compensation*, 348 Ga. App. 30, 821 S.E.2d 132 (2018).

2 *Rockwell v. Lockheed Martin Corp.*, 248 Ga. App. 73, 545 S.E.2d 121 (2001).

Notably, the Court of Appeals indicated its decision in *Rockwell* and its predecessors improperly diluted the precedent set by the Supreme Court of Georgia's decision in *Ocean Accident and Guaranty Corp. v. Farr*, when the Supreme Court first established the lunch break exception to compensability.[3] In *Farr*, an on-site employee was injured while walking down steps to the basement to eat his lunch during a break. The Supreme Court held the employee's "preparation for lunch and his eating lunch was his individual affair," thus his injury "arose out of his individual pursuit and not out of his employment." Accordingly, the Supreme Court denied the award of benefits in *Farr*.

Considering the conflict in case law and the inherent issues created by analyzing a worker's subjective intent in such scenarios, the Court of Appeals fashioned a "clearer bright-line rule" specifying the ingress and egress rule does *not* cover cases in which the employee is injured while leaving or returning to work on a regularly scheduled break. The Court of Appeals further disapproved its decision in *Rockwell* and two of its predecessors, *Travelers Insurance Co. v. Smith*[4] and *Chandler v. General Accident Fire & Life Assurance Corp.*[5] Accordingly, the Court of Appeals affirmed the Appellate Division and Superior Court's denial of Frett's request for benefits.

Despite establishing the "clearer bright-line rule," the Court of Appeals noted "any decision to apply the ingress and egress rule to the scheduled break exception should be made by our Supreme Court, particularly because the Supreme Court has never expressed its view on the ingress and egress rule generally."[6] Following the Court of Appeal's ruling, *Frett* was resolved, so the Supreme Court will not take it under consideration.

However, within a few months of the *Frett* decision, the Court of Appeals revisited its holding in *Frett* when issuing its opinion in *Daniel v. Bremen-Bowdon Investment Co.*[7] In *Daniel*, the employee parked in a lot owned by the employer, requiring her to walk down a public sidewalk and cross a street to reach her employer's place of business. Daniel was provided a regularly scheduled lunch break during which she was free to leave the workplace and pursue personal matters.

While on her regularly scheduled lunch break, Daniel was walking to her car to drive home for lunch when she was injured after tripping on the public sidewalk. Relying on the holding in *Frett,* the Court of Appeals affirmed the Appellate Division's ruling that the claimant's injury did not arise out of her employment because it occurred on a regularly scheduled lunch break. In reaching this decision, the Court of Appeals applied its ruling in *Frett*, where the bright-line rule was established that the ingress and egress rule does not extend to employee injuries occurring while leaving and returning to work from a regularly scheduled break. In *Daniel* and relying upon *Frett*, the Court of Appeals concluded the employee's injury was not compensable under the Workers' Compensation Act.

The Court of Appeals' ruling in *Daniel* and reliance upon *Frett* affirms the bright-line rule that the ingress/egress rule does not apply or extend coverage to accidents occurring on regularly scheduled breaks where the employer has no control over the employee's activities for the time period of the break. Daniel has applied for certiorari of the Court of Appeals' decision to the Supreme Court of Georgia. At this time, it is unclear whether the Supreme Court of Georgia will take *Daniel* under consideration. Consequently, for now, the bright-line rule established in *Frett* continues to control and accidents occurring on regularly scheduled breaks are not compensable, regardless of whether the employee is ingressing or egressing.

2019 LEGISLATIVE CHANGES

File the WC-1 in Every One

Effective Jan. 1, 2019, the State Board amended its rules regarding form WC-1 filing. Prior, the Board Rules did not require the filing of a WC-1 in medical-only claims. However, parties must now file a WC-1 in every claim regardless of whether indemnity benefits are paid. Pursuant to O.C.G.A. § 34-9-12(a), the WC-1 must be filed within 10 days of the employer's notice of the accident. It is important to keep in mind that failure to file Board forms, including the WC-1, could subject employers/insurers to attorney's fees or civil penalties. When claims enter litigation, most ALJs are issuing orders instructing the employer/insurer to file a WC-1 if one is not

3 *Ocean Acc. and Guar. Corp. v. Farr,* 180 Ga. 266, 178 S.E.2d 728 (1935).
4 *Travelers Ins. Co. v. Smith,* 91 Ga. App. 305, 85 S.E.2d 484 (1954).
5 *Chandler v. Gen. Acc. Fire & Life Assur. Corp.,* 101 Ga. App. 597, 114 S.E.2d 438 (1960).
6 *Frett* at 36.
7 *Daniel v. Bremen-Bowdon Inv. Co.,* 348 Ga. App. 803, 824 S.E.2d 698 (2019).

already on file with the State Board. Some ALJs have asserted penalties in cases predating Jan. 1, 2019, where no WC-1 has been filed. Consequently, in addition to filing a WC-1 in every 2019 and future claim, it may also be prudent to file a WC-1 in pre-2019 claims entering litigation, which will have the Board's attention.

Senate Bill 135 – Changes to TTD/TPD Rate, Fatality Claims Exposure and Exceptions to the 400-Week Cap

After a relatively quiet 2018 legislative session, the Georgia legislature turned its attention to workers' compensation law during its time under the Gold Dome in 2019. Senate Bill 135 went into effect July 1, 2019. The bill makes changes to the TTD/temporary partial disability (TPD) rates and the maximum compensation awarded to a surviving spouse in a fatality claim and adds limited exceptions to the 400-week cap on medical benefits in noncatastrophic claims.

TTD/TPD Rates

For accidents occurring on or after July 1, 2019, the TTD rate is increased from $575 per week to $675 per week. The increase in the maximum TTD rate was a compromise between the claimant and defense bars. The increased rate of $675 still keeps Georgia in the lowest five TTD states for the country. Furthermore, to qualify for the $675 max TTD rate, a worker would have to earn approximately $52,000 per year. The increased TTD rate would have only affected approximately 13 percent of 2018 workers' compensation claims.

Similar to the increase in the TTD rate, Senate Bill 135 also increased the maximum TPD rate from $383 to $450 per week for injuries occurring on or after July 1, 2019.

Fatality Claims — Surviving Spouse Compensation

Senate Bill 135 also increased the maximum compensation awarded in death benefits to a sole surviving spouse. For fatality claims occurring prior to July 1, 2019, the maximum compensation payable to a sole surviving spouse is $230,000.[8] For any death arising out of and in the course of the claimant's employment occurring on or after July 1, 2019, the maximum compensation paid to a surviving spouse cannot exceed $270,000.

Exceptions to the 400-Week Cap on Medical Benefits

Senate Bill 135's additional pertinent change relates to the creation of exceptions to the 400-week cap on medical benefits. Georgia law previously capped a claimant's entitlement to medical benefits at 400 weeks in claims designated as noncatastrophic.[9] Senate Bill 135 carves out limited exceptions to the statutory 400-week cap on medical benefits for noncatastrophic claims with injuries on or after July 1, 2013.[10] The limited exceptions include medical care related to the maintenance, repair, revision, replacement or removal of any prosthetic device, spinal cord stimulator, intrathecal pump device, orthotics, corrective eyeglasses, hearing aids or durable medical equipment as long as those specific items were originally furnished within 400 weeks of the date of injury. While the majority of the listed exceptions are easily identified, the inclusion of "durable medical equipment" is essentially a catch-all. The code defines "durable medical equipment" as "an apparatus that provides therapeutic benefits, is primarily and customarily used to serve a medical purpose, and is reusable and appropriate for use in the home." Examples include, but are not limited to, wheelchairs, beds, mattresses, traction equipment, canes, crutches, walkers, oxygen and nebulizers.

Most of the foregoing medical equipment now qualifying as exceptions to the 400-week cap on medical benefits are already typically involved in claims designated as catastrophic. Thus, the 400-week cap would not apply. However, in noncatastrophic claims with injuries on or after July 1, 2013, the previously mentioned medical devices will not be limited by the 400-week cap. These limited exceptions will result in increased exposure for future medical benefits and should be taken into account when evaluating a claim's settlement value. It is important to keep in mind these exceptions will also likely result in higher projected costs in Medicare Set-Aside (MSA) arrangements.

7 O.C.G.A. § 34-9-265(d).
8 O.C.G.A. § 34-9-200.
9 O.C.G.A. § 34-9-200(a)(3)(A).

Given the changes related to claims where the foregoing medical equipment is involved, it is likely prudent to obtain tailored opinions from the prescribing physician about the longevity of the device, including when and if it will need to be replaced, as an avenue for both evaluating and mitigating exposure for future medical benefits and projected costs in MSAs. Moreover, there is likely to be an increase in litigation regarding what medical equipment and care qualifies as "durable medical equipment" and an exception to the 400-week cap. If you have questions about these exceptions or other questions regarding the 2019 legislative changes to Georgia's Workers' Compensation Act, please contact your Swift Currie attorney.

Spin the Big Wheel — Managing the Posted Panel

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Rusty has tried more than 100 cases over the years. He previously worked as a claimants' attorney, which gives him the ability to think about strategy from the perspective of both sides of a case. Rusty has a deep understanding of what motivates the plaintiff's side of the aisle and is able to draw on this knowledge to develop the most effective defense for his clients.

Rusty has extensive experience working closely with the State Board of Workers' Compensation. He is also an avid public speaker who has given presentations to the Southern Association of Workers' Compensation Administrators, the State Board of Workers' Compensation and the International Association of Industrial Accident Boards and Commissions.

When he is not representing his clients, Rusty contributes to legal education by working as a part-time instructor at Georgia State University College of Law and the Department of Risk Management & Insurance, as well as Mercer University's Stetson School of Business and Economics. He also is on the Dean's Board of Visitors at Walter F. George School of Law at Mercer University and previously served as the president of the school's alumni board of directors.

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Thanks to his legal experience, Ben successfully protects his clients from those seeking to take advantage of them and the workers' compensation system. In addition, Ben has a well-rounded legal perspective that helps him find unique solutions to clients' problems and communicate with them in a relatable way.

Prior to joining Swift Currie, Ben worked as a prosecutor and criminal defense attorney, which helped him hone his skills as a fierce advocate for his clients. While working as a prosecutor, he participated in the prosecution of major felony crimes, including jury trials, where he expanded his trial skills.

Spin the Big Wheel — Managing the Posted Panel

The ability to control the medical treatment in a claim is essential in controlling the claim as a whole. Not only does the authorized treating physician (ATP) manage the direction of the claimant's treatment, but she often determines whether, and for how long, the claimant will be receiving indemnity benefits. As such, the posted panel of physicians can be the most critical document in a workers' compensation claim.

PANEL REQUIREMENTS: CONTENT

The employer must have a valid posted panel of physicians in order to control the medical. To be valid, the traditional panel must contain at a minimum six physicians or professional associations or corporations of physicians reasonably accessible to the employee.[1] At least one of the physicians must practice in the area of orthopedic surgery and no more than two of the physicians can be "industrial clinics."[2] Although the term "industrial clinics" has never been defined by the legislature, courts or the State Board of Workers' Compensation, industrial clinics are generally recognized as being synonymous with occupational health facilities. As a practical matter, having a panel that conforms to the above guidelines presumably makes the panel valid. However, the best practice is to provide additional physicians on the panel beyond the required six. This will avoid arguments by the claimant that the panel is invalid, should one doctor be deemed inappropriate for some reason, as claimants' lawyers are constantly trying to invalidate panels.

Employers often have a preferred facility where they wish to have their employees treat. In this case, the employer should list the facility on its posted panel of physicians. The law gives the employee the choice of either accepting the services of a physician selected by the employer from the panel or selecting another physician from the panel.[3] It is important to note the employer cannot maneuver around the requirements of the panel simply by sending the claimant to a preferred physician or having the claimant treated at an on-site facility. Employer direction to a particular facility is still subject to employee "acceptance" and the employee always has the right to choose from the panel.

PANEL REQUIREMENTS: POSTING/TRAINING

Not only must the employer ensure the number and type of physicians are correct on the panel, they must also ensure the panel is properly posted and employees are accurately trained on the purpose of the panel. The Georgia Workers' Compensation Act (the Act) requires the panel to be posted in prominent places upon the business premises.[4] Additionally, the employer must take all reasonable measures to ensure employees understand the function of the panel and the employee's right to select a physician from the panel if they are injured.[5] Moreover, employers must ensure their employees are given appropriate assistance in contacting panel physicians when necessary.[6]

The Georgia State Board of Worker's Compensation takes seriously the requirements regarding the prominent posting of the panel of physicians and the training of employees as to the purpose and use of the panel. To comply with these provisions, it is recommended to place multiple copies of the panel of physicians around the business. Near time clocks, in break rooms, cafeterias, nurse stations, first-aid rooms and supervisor's offices are all appropriate locations. During orientation, employees should be trained on procedures for reporting workplace accidents, given a copy of the posted panel of physicians, sign an agreement stating receipt of a copy of the panel and acknowledging their understanding of reporting procedures for workplace accidents. It is also a good idea to retrain employees on workplace accident protocols on a quarterly basis. Further, employers should review their posted panel of physicians on an annual basis to verify it is up to date and in compliance with the current laws.

1 O.C.G.A. § 34-9-201(b)(1).
2 O.C.G.A. § 34-9-201(b)(1).
3 O.C.G.A. § 34-9-201(b)(1).
4 O.C.G.A. § 34-9-201(c).
5 O.C.G.A. § 34-9-201(c)(1).
6 O.C.G.A. § 34-9-201(c)(2).

The penalty for failing to maintain a valid posted panel of physicians can be devastating. If the employer fails to provide a valid panel, properly post the panel, properly train the employee on the procedures for utilizing the panel or assist the employee in contacting the chosen provider, the employee may select any physician to render service at the expense of the employer.[7] Whenever claimants are allowed to select their own physician, the exposure in the claim rises exponentially, protracting the life of the claim. Ensuring the employer has a well-drafted posted panel of physicians and employees are correctly trained are critical to a successful outcome to a claim.

CLAIMANT STRATEGIES

Even when employers have gone through all of the steps to make sure their panels are valid, claimants or, more precisely, their attorneys will inevitably come up with ways to argue the panel is invalid. Over the years, claimants' attorneys have attempted to invalidate panels using several strategies.

Incorrect Phone Numbers

In 2012, a claimant's attorney argued an employer's panel was invalid as two different physicians on the panel were listed with the same telephone number.[8] After specifically finding the employer had provided the employee with a copy of the panel immediately after the injury, posted multiple copies of the panel around the work site, placed a copy of the panel specifically in the employee break room and provided specific workers' compensation training to all of its employees at the time of their hire, the judge still held the panel to be invalid based solely on the issue of the duplicate telephone numbers.[9] In so finding, the judge allowed the claimant to treat with a physician of his choosing and he selected a claimant-oriented psychiatrist.[10] Fortunately for the employer, the Appellate Division saw things differently.

It is important to note, as the Appellate Division pointed out, the party challenging the validity of a panel has the burden of proving the panel violates the provisions of the Act.[11] In reviewing the record from the trial court, the Appellate Division held, even assuming the telephone numbers were wrong, the evidence showed the panel was still otherwise valid and reversed the trial judge's decision.[12]

Incorrect Doctor Address

In another 2012 case, a claimant's attorney tried a similar tactic to invalidate another employer's panel based on an incorrect suite number and city within the addresses listed for the panel physicians.[13] The claimant argued he was entitled to a change of physician, to a physician of his choice, due to an error in the listed address of two separate physicians on the employer's posted panel.[14] One of the physicians on the panel had the suite number listed as "110," when their actual suite number was "610."[15] The other error consisted of a physician's city being listed as "Atlanta," instead of "Marietta," as it should have been.[16] In response, the employer argued the clamant did not attempt to treat with either of the affected physicians, nor was he denied reasonable access to medical treatment as a result of the errors.[17]

This particular claimant had filed three separate claims with the same employer and treated extensively with multiple doctors in conjunction with each of those claims. However, it appeared that once one of the doctors began to opine he could not determine the origin of the claimant's pain and it may be chronic in

7 O.C.G.A. § 34-9-201(f).
8 SBWC Claim No. 2012017109, Trial.
9 *Id*.
10 *Id*.
11 Board Rule 201(a)(1)(i).
12 SBWC Claim No. 2012017109, Appeal.
13 SBWC Claim No. 2012019347, Trial.
14 *Id*.
15 *Id*.
16 *Id*.
17 *Id*.

nature, the claimant then turned to the tactic of attacking the panel.[18] Interestingly, this claimant's attorney chose not to file a hearing request to attack the panel and instead attempted to change physicians by filing a motion with the Board, which was ultimately denied, both by the administrative law judge (ALJ) and the Appellate Division.[19]

Doctors Changing Practices

In some instances, not only will claimants' attorneys seek to gain control of the medical by attacking the panel of physicians, they also seek to put money in their pocket through attorneys' fees and litigation costs. Such was the case in 2013, when a claimant's attorney attacked a panel of physicians based on an incorrectly listed physician's address.[20] At the time the employer's panel was drafted, the physician in question was practicing at Concentra, an industrial clinic.[21] At the time of the claimant's injury, however, the physician had joined another practice, but the employer did not update the panel to reflect the change of address.[22] Although the employer did not amend the physician's address, the evidence showed if the claimant had called the number listed for the physician, which he did not, he would have been directed to the physician's new office.[23] Ultimately, despite the evidence concerning the physician's telephone number, the judge found the panel invalid and held the employer failed to provide the claimant with reasonable access to the panel physician.[24] Additionally, the judge held the employer's defense of the panel was unreasonable and ordered the employer to pay $2,000 in attorney's fees.[25] Fortunately for the employer, the Appellate Division stepped in.

On appeal, the Appellate Division held there was no evidence to support the ALJ's conclusion that the claimant was denied access to the physician in question or any other physician on the panel, nor did the claimant ever make an argument that he was denied access.[26] In support of their reversal, the Appellate Division held there is nothing in the Act or Board Rules stating a mistaken address will invalidate an otherwise valid panel of physicians.[27] To summarize their opinion, the Appellate Division held, "In other words, this technical error, standing alone, did not warrant the employer's loss of control of the list of medical providers available to the employee through the employer for his work-related injury."[28] Finally, with regard to the attorney's fees originally awarded, the Appellate Division reversed the original award and refused to award the claimant attorney's fees.[29]

More Than Two Industrial Clinics?

Another attack claimants' attorneys attempt concerns panels with more than two industrial clinics. Many employers choose to include more physicians than the minimum six, sometimes including as many as 10 or more. This number may often include a third industrial clinic. As soon as the claimant's attorney learns of the third industrial clinic, they may seize the opportunity to attack the panel. However, the employer should not be intimidated by this tactic. Over the years, the Board has almost uniformly held when there are more than six additional physicians, the inclusion of the third industrial clinic will not invalidate the panel. As long as a panel with only two industrial clinics can be formed by numerous choices on the panel, the Board generally will not invalidate the panel.

18 *Id*.
19 *Id*., SBWC Claim No. 2012019347, Appeal.
20 SBWC Claim No. 2013007884, Trial.
21 *Id*.
22 *Id*.
23 *Id*.
24 *Id*.
25 *Id*.
26 SBWC Claim No. 2013007884, Appeal.
27 *Id*.
28 *Id*.
29 *Id*.

WHAT IF DOCTORS REFUSE TO TREAT?

In addition to the attacks of claimants' attorneys, the issue of doctors refusing to treat claimants can also arise. When this occurs, the Act provides the employer is allowed to increase the panel by one physician for each physician who has refused treatment.[30] For example, if the claimant has been treating with a general practitioner, then chooses to exercise his one-time change of physician to an orthopedist, but the selected panel orthopedist refuses to treat the claimant, the employer is allowed to add another orthopedist to the panel instead of losing control of the medical. The same outcome applies if the claimant chooses a physician who has retired.

LISTING HOSPITALS OR ENTIRE PRACTICES

Another issue that arises is a blanket listing of hospitals or entire medical practices by the employer on its panel. If an entire practice is listed on a panel, the claimant can choose any doctor in that practice, effectively eliminating employer control of the medical. A better practice is to name specifically the approved doctors from any given hospital or practice group, eliminating the doctor shopping claimants will do if they have unlimited choice within a practice.

CONCLUSION

Failing to properly draft a panel of physicians can have dire consequences on the outcome of a claim. Further, even when the panel is properly drafted, the employer must take care to review the panel frequently to ensure the listed physicians are currently practicing and their information is up to date. Claimants' attorneys are always looking for the smallest openings to take control of claims and take further advantage of employers by seeking attorney's fees and litigation costs. A current, well-drafted panel of physicians is one of the best tools an employer can have in its pocket to start a claim off in the best direction possible. Beware and be ready for the inevitable attacks on your panel.

[30] Board Rule 201(a)(1)(i).

Don’t Fall off a Cliff With Pain Management

By Joseph A. Munger and Nichole C. Novosel

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Joseph "Joe" A. Munger is a Swift Currie partner and veteran workers' compensation defense attorney with 35 years of experience. On average, he tries one workers' compensation case per month and, as a result, he has appeared in front of every administrative law judge in the state.

Joe has worked with a wide variety of clients including organizations in the retail, hotel, restaurant, construction, utilities, health care, insurance, tree service, manufacturing, transportation and banking industries.

Joe's reputation as a vigorous advocate, with a victorious trial record to match, serves his clients well in the courtroom and at the settlement table. As a result, he is able to instill confidence in his clients because they know he can meet their needs and solve their problems efficiently.

To his practice, Joe brings strong legal writing and research skills, which he honed during his time as a clerk for a federal court judge. When he is not using his communication skills to obtain wins for his clients, Joe shares his experience by giving lectures and publishing articles on employment-related subjects, such as the drug-free workplace, discrimination, disability and workers' compensation topics. He has also served on Swift Currie's Management Committee and the Employment and Labor Law Committee of the Defense Research Institute (DRI).

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Serving clients with an integrated and proactive approach, Nicki is a highly effective communicator who builds trustworthy relationships that facilitate meaningful and productive conversations with clients. She is personable and always available to speak with clients to develop and implement strategies that lead to cost-effective solutions.

Nicki began her career with Swift Currie as a summer associate before joining full time in 2018.

Don't Fall off a Cliff With Pain Management

When an employee sustains a compensable injury on the job, an employer has the statutory obligation to furnish the employee with medical treatment that shall be reasonably required and appears likely to effect a cure, give relief or restore the employee to suitable employment.[1] In some cases, an employer/insurer must furnish pain management treatment as part of this obligation. However, as we all know, pain management treatment often adds extra time, money and frustration to a workers' compensation claim.

UNDERSTANDING PAIN AND PAIN MANAGEMENT

Perhaps what makes pain so difficult to treat and understand is the fact it is subjective and potentially long lasting. Sometimes pain can be a symptom of an injury and other times it is not.[2] There are two types of pain: acute and chronic. Acute pain typically has a clear pain generator or cause.[3] To treat acute pain, the patient and provider are focused on diagnosing the cause of pain and resolving that cause.[4] An example of acute pain is pain associated with a broken bone, which resolves when the broken bone heals.

On the other hand, the pain generator is unclear for chronic pain.[5] This makes it difficult to determine the exact pathology of the pain, and behavioral and psychological issues may predominate.[6] The Georgia Pain Management Clinic Act defines chronic pain as "physical pain treated for a period of 90 days or more in a year but shall not include perioperative pain . . . ."[7] An example of chronic pain can include ongoing back pain with emotional effects of depression, anger, anxiety and fear of re-injury that is not associated with an injury.

Pain management is a medical subspecialty dedicated to the treatment of patients with serious chronic and acute pain problems. Standard pain management treatment options include medication, injections and implanted devices.[8] There are also a number of alternative options. As such, it is imperative to understand potential treatment options to ensure the claimant is being provided with appropriate treatment that is reasonably required and appears likely to effect a cure, give relief or restore the employee to suitable employment in furtherance of the goals of the Georgia workers' compensation system.

OPIOIDS AND THE OPIOID CRISIS

When we think of pain management, we tend to think of opioids and the devastating effect the opioid crisis has on our communities in Georgia. According to the National Institute on Drug Abuse, Georgia providers wrote 70.9 opioid prescriptions for every 100 persons, compared to the average U.S. rate of 58.7 prescriptions in 2017.[9] While Georgia remains above average, this figure is actually the lowest rate in the state since 2006 (when the data became available).[10]

In addition to the tragedies associated with the opioid crisis, opioid prescriptions can have a significant impact on a workers' compensation claim. Opioids, especially brand name medications, are expensive. The employer/insurer faces further expense when opioids are prescribed for long-term periods. It is also important to keep in mind the employer/insurer may also become financially responsible for the costs of addiction in the event a claimant becomes addicted to opioids prescribed by the authorized treating physician (ATP).[11] Even

1 O.C.G.A. § 34-9-200 (2018).

2 Keith C. Raziano, Ongoing and Upcoming Changes and Regulations Related to Opioid Use at the 2018 Southeast Biofeedback and Clinical Neuroscience Association Annual Conference (Nov. 2, 2018).

3 Keith C. Raziano, Medication Tapering and Alternatives at the Atlanta Claims Association Seminar Workers' Compensation Section (April 20, 2018); *Acute vs. Chronic Pain*, Clev. Clinic, https://my.clevelandclinic.org/health/articles/12051-acute-vs-chronic-pain (last reviewed Jan. 26, 2017).

4 Raziano, *supra* note 3.

5 Acute vs. Chronic Pain, *supra* note 3.

6 *Id.*

7 O.C.G.A. § 43-34-282(3) (2018).

8 Raziano, *supra* note 2.

9 *Georgia Opioid Summary*, National Institute on Drug Abuse, https://www.drugabuse.gov/drugs-abuse/opioids/opioid-summaries-by-state/georgia-opioid-summary (last revised March 2019).

10 *Id.*

11 *Waffle House Inc. v. Bozeman*, 194 Ga. App. 860, 860, 392 S.E.2d 48, 50 (1990) ("Drug addiction or disabilities resulting therefrom shall not be deemed to be `injury' or `personal injury' by accident arising out of and in the course of employment except when such addiction was caused by the use of drugs or medicines prescribed for the treatment of the initial injury by an authorized physician." (quoting O.C.G.A. § 34-9-1(4))).

opioids prescribed for only a short period of time can significantly impact a workers' compensation claim by increasing the disability duration, medical costs, risk of surgery and risk of late opioid use.[12]

The Georgia legislature has attempted to address the opioid crisis by passing a law that created a pill-tracking database, known as a Prescription Drug Monitoring Program (PDMP). The PDMP, created in 2017 by Georgia House Bill 249,[13] is an electronic database used to monitor the prescribing and dispensing of controlled substances, which helps eliminate duplicative prescription and overprescription.[14]

The Georgia legislature has also enacted the Georgia Pain Management Clinic Act (GPMCA) to provide licensing requirements and regulations for physicians operating "pain clinics."[15] The GPMCA, created by House Bill 178 in 2013, outlines the licensure requirements and regulations for physicians operating "pain clinics."[16] The purpose of licensure and regulation of pain management clinics is to better protect the public from criminal activities associated with the illegal distribution of controlled substances, as well as provide a safer place for people to obtain appropriate medical treatment by requiring certain minimum training of practitioners and imposing regulations on pain management clinics.[17] The GPMCA requires all pain management clinics to be licensed by the Board and biennially renew their license with the Georgia Composite Medical Board (GCMB).[18] The GCMB further delineates regulations for pain management clinics regarding licensure and renewal requirements, standards of operation and notifications to the Board.[19] Any physician who fails to comply with the Act shall be guilty of a felony.[20]

In addition to the regulations set forth by the GPMCA, the GCMB has implemented a rule requiring office visits and drug testing every three months for Schedule II or III drugs *if* the morphine equivalent daily dose (MEDD) is more than 30 mg.[21] For MEDD 30 mg or less, the requirement is once a year.[22] While less drug testing sounds like a regression on its face, the regulation will reduce the number of urine drug screenings (UDS) that are ordered. This is actually a positive action because some self-serving providers were previously ordering more drug tests than necessary to increase their own monetary gain.

The Centers for Disease Control and Prevention (CDC) also issued prescribing guidelines in 2016.[23] These guidelines outline recommendations for determining when to initiate or continue opioids for chronic pain, opioid selection, dosage, duration, follow-up, discontinuation, assessing risks and addressing harms of opioid use.[24]

While the regulations and recommendations concerning opioid prescription and dispensing are mainly directed at clinicians, an employer/insurer who is familiar with such regulations is better equipped to ask physicians the right questions and further assess whether opioid prescriptions are appropriate for the claimant in any workers' compensation claim.

SPINAL CORD STIMULATORS

Another pain management option we are familiar with is spinal cord stimulation (SCS). The purpose of SCS is to decrease pain frequency, duration and intensity, as well as improve function.[25] The FDA has indicated it may be used as an aid in the management of chronic, intractable pain of the trunk and/or limbs.[26] The spinal

12 Barbara Webster et al., *Relationship Between Early Opioid Prescribing for Acute Occupational Low Back Pain and Disability Duration, Medical Costs, Subsequent Surgery and Late Opioid Use*, Spine (Phila Pa 1976) 32 (19): 2127-2132, https://www.ncbi.nlm.nih.gov/pubmed/17762815 (September 2007); Raziano, *supra* 2.

13 H.R. 178, 152nd Gen. Assemb., Reg. Sess. (Ga. 2013), *available at* http://www.legis.ga.gov/Legislation/20132014/135382.pdf.

14 O.C.G.A. § 16-13-63 (2018); *Prescription Drug Monitoring Program*, Ga. Dept. of Pub. Health, https://dph.georgia.gov/pdmp (last updated Aug. 23, 2018).

15 H.R. 249, 154th Gen. Assemb., Reg. Sess. (Ga. 2017), *available at* http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/249.

16 Pain Management Clinic Act, O.C.G.A. §§ 43-34-280 to 290 (2018).

17 O.C.G.A. § 43-34-281 (2018).

18 O.C.G.A. § 43-34-283 (2018).

19 Ga. Med. Composite Board, Rules and Reg. of the St. of Ga., Ch. 360-8 Pain Management Clinics (2018), http://rules.sos.ga.gov/GAC/360-8.

20 O.C.G.A. § 43-34-288 (2018).

21 Emphasis added. Ga. Med. Composite Board, *supra* note 19.

22 *Id.*

23 Deborah Dowell et al., CDC Guidline for Prescribing Opioids for Chronic Pain, Centers for Disease Control and Prevention, https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fmmwr%2Fvolumes%2F65%2Frr%2Frr6501e1er.htm (Mar. 18, 2016); Raziano, *supra* note 2.

24 Deborah Dowell et al., *supra* note 23.

25 Keith C. Raziano, Spinal Cord Stimulation, Presentation at State Board of Workers' Compensation Meeting (August 2015).

26 *Id.*

cord stimulator consists of a neurostimulator surgically implanted under the skin.[27] It works like a pacemaker, delivering mild electrical impulses to an area near the spine.[28] These signals travel to the brain before a pain signal can arrive.[29]

SCS is controversial in the workers' compensation arena due to its high cost and potential failure to improve function or reduce opioid dosage.[30] There are also numerous potential complications associated with an SCS, including device complications such as lead fracture or migration, battery failure and potential surgical complications.[31] Sources of strong electromagnetic interference, such as MRIs and RF/microwave ablation, can also interact with the neurostimulation system, resulting in serious injury or device damage.[32]

Generally, a physician must take into account a number of factors to identify a candidate for SCS.[33] These include considering the type and distribution of pain, the pathology responsible for the pain, functional goals and a psychological evaluation.[34] If selected for an SCS, the claimant would then undergo a trial before progressing to a permanent implant upon a successful trial.[35] To determine a successful trial, in addition to pain relief, a physician may examine if functional goals are met, the claimant has reached virtual MMI prior to the trial, there is a reduction in medication use and there is a high benchmark of pain relief.[36]

When SCS has been recommended in a workers' compensation claim, it is important to confirm the physician prescribing an SCS has taken the steps to evaluate whether a claimant is a good candidate for SCS and that an SCS is the most appropriate option.

OTHER ALTERNATIVES

Pain management treatment options may also include a number of other alternatives to opioids and spinal cord stimulation. Among the most well-known alternatives are physical therapy and steroid injections. Cognitive behavioral therapy (CBT) is another alternative approach to pain management, which involves talk therapy (psychotherapy).[37] CBT is structured counseling for a limited number of sessions with an ultimate goal of self-awareness of inaccurate or negative thinking.[38] With regard to chronic pain management, an overview of CBT treatment for claimants can consist of:

1. correcting negative (distorted) thinking about chronic pain;
2. controlling emotional reactions to chronic pain; and
3. coping more effectively with chronic pain and other stressors.[39]

Another option for pain management treatment is biofeedback.[40] Biofeedback involves learned relaxation and a combination of counseling and electronic monitoring.[41] It allows for "training" of otherwise automatic bodily functions, such as heart rate, breathing and muscle contraction.[42] Virtual reality is another method for pain management treatment, which allows for interruption of the pain cycle and works to reduce the perceived intensity of the pain signals.[43]

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27 How It Works: Spinal Cord Stimulation, Medtronic, https://www.medtronic.com/us-en/patients/treatments-therapies/spinal-cord-stimulation-chronic-pain/therapy-overview/how-it-works.html (last updated Aug. 2018).

28 *Id.*

29 *Id.*

30 Raziano, *supra* note 25.

31 *Id.*

32 How It Works: Spinal Cord Stimulation, *supra* note 27.

33 Todd B. Sitzman & David A. Provenzano, *Best Practices in Spinal Cord Stimulation*, 42 Spine 67 (2017).

34 *Id.*; Raziano, *supra* note 25.

35 *Id.*

36 *Id.*

37 Raziano, *supra* note 3; Elizabeth Shimer Bowers, *Managing Chronic Pain: A Cognitive-Behavioral Therapy Approach*, WebMD, https://www.webmd.com/pain-management/features/cognitive-behavioral#1 (last reviewed June 27, 2011).

38 Raziano, *supra* note 3.

39 Robert J. Gatchel & Kathryn H. Rollings, *Evidence Informed Management of Chronic Low Back Pain with Cognitive Behavioral Therapy*, 8 Spine J. 40 (2008).

40 Raziano, *supra* note 3.

41 *Id.*

42 *Id.*

43 *Id.*

SELF-SERVING SPECIALISTS AND TREATING UNRELATED CONDITIONS

In addition to understanding the many types of treatment options a claimant may receive, it is also important to understand the medical care provider. Even with continued legislative efforts, self-serving specialists exist. In response to the opioid epidemic, the Office of the U.S. Attorney has also made strides to fight the opioid epidemic by investigating, prosecuting and sentencing physicians who commit criminal acts in connection with opioids. Nevertheless, self-serving specialists exist and continue their endeavors to profit off prescribing a high number of opioids and/or running up costs with a series of costly treatments. As such, continued monitoring and involvement throughout the life of a claim can help an employer/insurer identify a self-serving specialist early on.

Another potential complication in pain management is the treatment of unrelated conditions. Perhaps a claimant has a number of comorbid conditions contributing to his overall condition. Because an employer/insurer is not responsible for treatment of conditions unrelated to the on-the-job injury, it is important to understand treatment plans and the specific condition being treated. To combat potential treatment of unrelated conditions, it is imperative the correct questions are asked to determine the causation of symptoms and the purpose of all recommended treatment.

TREATMENT PLANS AND HANDLING STRATEGY

In the workers' compensation realm, pain management treatment can complicate just about every aspect of a claim. It is essential to be proactive and decisive in taking control of the medical in our cases. Sometimes pain management is inevitable, but there are ways to mitigate your exposure.

Stay in Control of the Medical

A valid panel helps ensure the employer/insurer can maintain control of the medical. Without a valid panel, a claimant may be able to treat with whichever physician he chooses, which may ultimately lead to a number of costly referrals, including a claimant-friendly pain management physician.

Ask the Prescribing Physician Questions

When an ATP or pain management physician prescribes a treatment plan, it is helpful to have a very clear statement as to the goals of the treatment and why the prescription is given. These explanations should relate to the on-the-job injury. Otherwise, that medication can be controverted as a treatment for a non-accepted or unrelated condition. If the treatment plan is unclear, ask the physician to clarify the plan and provide explanations so that you can make an informed decision in authorizing or controverting medical treatment. However, keep in mind, extended delay in authorizing treatment could constitute a breach of ethical duty.

Obtain a Second Opinion

A second opinion may be obtained through an independent medical examination (IME) or a peer/utilization review. In an ideal world, an IME physician will render a favorable opinion with a clear treatment plan and the claimant will agree to treat with the IME doctor instead of the current physician. While this usually is not the case, at the very least, an IME by a well-respected "middle-of-the-road" physician may carry more evidentiary weight to support a change of physician or to show certain recommended treatment is not medically necessary. Peer/utilization reviews may also be used to assess the prescribing doctor's treatment plan, although it should be noted these carry less weight than a credible IME physician at a hearing.

Continue to Monitor, Stay Diligent and Intervene When Necessary

In situations when the prescribing physician continues a less than ideal treatment plan, continue to seek clarification and question the physician as variables change. Over time, a physician may decide tapering is appropriate to reduce the prescription of opioids in claims involving long-term opioid prescriptions. You may also decide to send the claimant for genetic testing (pharmacogenetics) to illuminate treatment involving more effective and less dangerous medication choices based upon a claimant's genetic predisposition.[44]

MSA IMPLICATIONS AND TIPS FOR REDUCING AN MSA

Pain management treatment also affects the cost of a workers' compensation claim in the settlement context. In a claim necessitating a Medicare Set-Aside (MSA) Arrangement, an employer/insurer will likely need to account for the future costs of pain management treatment. An employer/insurer will not only face high costs to provide short-term treatment for the claimant, but they will also face high costs to settle the claim as the claimant is essentially granted a lifetime of ongoing pain management treatment. While a high MSA can be a barrier to settlement, below are some suggestions that may help reduce an MSA.

- See the big picture: Have a game plan for success including clearly delineating accepted and denied conditions and treatments and identifying potential cost drivers and issues to develop a handling strategy.
- Watch what is being paid for by carefully paying only for accepted treatments and conditions to avoid the CMS determining payment as an acceptance of responsibility.
- Take control of prescriptions by obtaining generic alternatives, addressing prescribed dosages (e.g., replacing one 60 mg with two 30 mg may cut the cost of medication) and identifying potential combination drugs (e.g., prescribing two drugs which make up one combination drug).
- Clean up the medical records by obtaining written clarification from the ATP as to which treatment options are active and which have been discontinued or are no longer necessary.
- If you disagree with the decision, challenge CMS.[45]

CONCLUSION

Overall, pain management treatment presents a variety of complications in the workers' compensation context. However, early involvement and continued diligence are key to mitigating costs while ensuring an employer/insurer is providing treatment in accordance with the Workers' Compensation Act.

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[44] Steven H. Richeimer & John J. Lee, *Genetic Testing in Pain Medicine—The Future is Coming*, 16 Prac. Pain Mgmt. 8, https://www.practicalpainmanagement.com/treatments/genetic-testing-pain-medicine-future-coming (last updated Aug. 8, 2017).

[45] Brian Cowan, *Five Steps to Reduce Your WCMSA Costs*, Verisk (May 9, 2018) https://www.verisk.com/blog/five-steps-to-reduce-your-wcmsa-costs/.

Name Your Price — Figuring out Issues With Average Weekly Wage and Concurrent Similar Employment

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Mark has particular experience with large retailers, temporary staffing companies, professional employer organizations, manufacturers, food and beverage companies, commercial and residential service companies, emergency medical service companies, transportation companies, construction companies, auto dealerships, municipalities and Georgia's growing entertainment industry.

Mark has handled hundreds of workers' compensation cases in his career, developing long-term relationships built on trust and delivering successful outcomes. His application of time-honored best practices helps put stress at bay, enabling clients to feel more relaxed and better focused on sound strategies for resolution.

With a straight-forward approach, Mark is diligent in the preparation of his cases, paying keen attention to precise detail and subtle nuances that, when properly observed, can signal success or the opposite: pitfalls. His exacting approach closes the door on gaps for error, leading to successful outcomes.

Mark understands that working for clients is a privilege, and privilege carries the responsibility of serving clients in a diligent and straight-forward manner, always focusing on the matters at hand to represent best interests and provide leadership that inspires confidence and success.

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Charles "Clay" L. Clifton, III, practices in the firm's worker's compensation practice, where he frequently represents insurance adjusters and manufacturers. He works with clients to resolve claims effectively and efficiently, maximizing the best possible outcomes for the legal and financial success of their businesses.

Clay has an extensive understanding of Articles 3 and 4 of the Uniform Commercial Code, which relate to check and promissory note liability, respectively. He leverages his knowledge to help clients save money and avoid legal entanglement by educating clients as to cost-effective solutions, which limit their liability when using the checking system. Such solutions enable clients to limit the financial risks associated with check fraud and double-payment obligations. His capabilities and understanding of these rules facilitate the distinct advantage of limiting checking-related claim exposure.

Clay is always accessible to clients, highly approachable and has a knack for helping clients feel at ease with the complexities of workers' compensation matters. He encourages robust conversations to assess client needs, evaluating the best solutions and strategies to produce cost-saving results and reduce risk exposure.

Name Your Price — Figuring out Issues With Average Weekly Wage and Concurrent Similar Employment

In determining the amount of benefits owed to a claimant, the first step is calculating the average weekly wage (AWW). This figure, when multiplied by two-thirds, as required by statute, establishes the claimant's compensation rate, which is the rate used for payment of temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits.[1] Due to this, getting things right in terms of the AWW is important. In situations where the AWW is calculated incorrectly, the employer/insurer may inadvertently make overpayments and/or underpayments, which can result in late payment penalties and litigation.[2] An incorrect AWW can also have negative consequences in setting claims reserves and when evaluating claims for settlement.

In some ways, calculating an AWW can be relatively simple. However, it can also get complex, particularly when dealing with employees who work more than one job leading up to an accident, which raises the question of what earnings should be included in the computation of the AWW.

As a preliminary matter, it is worth noting the maximum compensation rate in Georgia recently saw an increase.[3] Formerly, the maximum compensation rate for TTD benefits was $575 per week. As of July 1, 2019, the maximum TTD rate is $675.[4] Additionally, the maximum compensation rate for temporary partial disability (TPD) benefits, which was $383 per week, has increased to $450 per week.[5] These increased rates apply to claims with accident dates on or after July 1, 2019.[6] While increases to both the maximum TTD and TPD rates are a major development for employers and insurers alike, it has not affected the manner in which a claimant's AWW and compensation rate are calculated.

There are three potential methods for calculating a claimant's AWW established by O.C.G.A. § 34-9-260, and the information required for each slightly varies.[7] The first and preferred method for calculating a claimant's AWW is established by O.C.G.A. § 34-9-260(1), which provides, "If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of 13 weeks immediately preceding the injury, his AWW shall be one-thirteenth of the total amount of wages earned in such employment during the 13 weeks."[8] In other words, the claimant's weekly income for the 13 weeks preceding the date of accident/injury is added up and divided by 13 — this number is the AWW.

The second method for calculating a claimant's AWW is established by O.C.G.A. § 34-9-260(2) and used when a claimant has not worked for an employer for substantially the whole of the 13 weeks preceding her accident/injury.[9] This section provides, "If the injured employee shall not have worked in such employment during substantially the whole of 13 weeks immediately preceding the injury, the wages of a similar employee in the same employment who has worked substantially the whole of such 13 weeks shall be used in making the determination under the preceding paragraph."[10] This method is often referred to as the "similar employee" method, as the wages of an employee working in a similar (or the same) role are used to calculate the claimant's AWW.[11] When utilizing this method, "a similar employee in the same employment" need only be one who "at least performs a similar type of job for the same employer," rather than someone in the same job or on the same pay scale.[12] The similar employee's weekly income for the 13 weeks preceding the claimant's accident, rather than the claimant's weekly income, is totaled and divided by 13.[13]

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1 O.C.G.A. § 34-9-261 *and* O.C.G.A. § 34-9-263.
2 O.C.G.A. § 34-9-221(e).
3 Ga. Legis. Assemb. SB 135. Reg. Sess. 2018-2019 (2019) (http://www.legis.ga.gov/Legislation/20192020/183780.pdf).
4 *Id.*
5 *Id.*
6 *Id.*
7 O.C.G.A. § 34-9-260.
8 O.C.G.A. § 34-9-260(1).
9 O.C.G.A. § 34-9-260(2).
10 *Id.*
11 *Id.*
12 *Westbrook v. Travelers Ins. Co.,* 117 Ga. App. 361, 160 S.E.2d 650 (1968).
13 *Compare* O.C.G.A. § 34-9-260(2) *with* O.C.G.A. § 34-9-260(1).

Lastly, if the methods established by O.C.G.A. §§ 34-9-260(1) and 34-9-260(2) are unavailable, O.C.G.A. § 34-9-260(3) establishes "full-time weekly wage of the injured employee shall be used" to calculate the AWW.[14] For example, if a claimant makes $10 per hour and works 40 hours per week, the AWW would be $400.

Occasionally, a claimant or similar employee has worked less than 13 weeks. The question then arises as to whether the work period was "substantially the whole" of 13 weeks for AWW purposes. Though not specifically established by the Georgia Workers' Compensation Act (the Act), where a claimant or similar employee has not worked *at least 12 weeks* prior to the date of accident/injury, it has generally been found the claimant has not worked substantially the whole of the requisite 13-week period.[15] For example, in *American Fire & Casualty Co. v. Davidson*, it was found an employee who had worked only 11 weeks prior to his date of accident/injury had not worked substantially the whole of the 13-week period.[16]

Where a claimant was working for more than one employer prior to her accident and the injury suffered is compensable, calculating the AWW becomes more complicated. With respect to concurrent wage issues, Board Rule 260(c) provides, "If the employee has similar concurrent employment, the wages paid by all similar concurrent employers shall be included in calculating the AWW."[17]

In *Fulton County Board of Education v. Thomas*, the Supreme Court of Georgia offered a bit more clarity as to what an ALJ should consider when determining whether two roles constitute "concurrent" employment.[18] In *Thomas*, the claimant had been employed as a school bus driver with the Fulton County Board of Education for eight years.[19] Her employment with Fulton County required her to drive county school buses during the nine-month school year, but not during the school district's summer vacation.[20] Of note, the claimant's salary was paid out over a 12-month period.[21] During her summer vacation in 2011, the claimant supplemented her income by working for Quality Drive Away (QDA), where she drove newly manufactured school buses from the Atlanta area to other parts of the country.[22]

In October 2011, the claimant was injured while working for Fulton County.[23] While the county did not dispute the compensability of the claimant's injury, it argued that her injury did not fall within the "concurrent similar employment" doctrine of the Act.[24]

At hearing, the ALJ found that Thomas' employment with QDA constituted "concurrent similar employment" because it involved the same "type and size" of school bus and "skill set" required with her employment with the county. Further, she was employed with QDA for some portion of the 13 weeks prior to sustaining the compensable injury.[25] Thereafter, the Board's Appellate Division reversed the ALJ's decision, finding the claimant's employment was similar, but not concurrent.[26] The Superior Court subsequently affirmed the Appellate Division's decision, but this decision was reversed by the Court of Appeals.[27]

When the case reached the Supreme Court, it was first noted there had been "no Georgia case law . . . examining the meaning of *concurrent*" in the context presented by the facts of *Thomas*.[28] The court noted, for the most part, questions of concurrent similar employment involved employees who were simultaneously employed. In *Thomas*, the claimant had only worked for QDA for 10 days of the 13-week period used to calculate her AWW and never worked for both employers simultaneously.[29]

14 O.C.G.A. § 34-9-260(3).
15 *Am. Fire & Cas. Co. v. Davidson*, 116 Ga. App. 255, 157 S.E.2d 55 (1967).
16 *Id.*
17 Board Rule 260(c).
18 299 Ga. 59, 59, 786 S.E.2d 628, 629 (2016)
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.*; *see also St. Paul Fire & Marine Ins. Co. v. Walters*, 141 Ga. App. 579 (1977).
25 *Thomas*, 299 Ga. at 60, 786 S.E.2d at 630.
26 *Thomas*, 299 Ga. at 61, 786 S.E.2d at 630.
27 *Id.* (*citing Thomas v. Fulton Cnty. Bd. of Educ.*, 331 Ga. App. 828, 832, 771 S.E.2d 482, 485 (2015)).
28 *Thomas*, 299 Ga. at 63, 786 S.E.2d at 632 (emphasis added).
29 *Id.*

The *Thomas* court analyzed the language of O.C.G.A. § 34-9-260(1) at length, and found "simultaneity" was not "an absolute condition" to the application of the concurrent similar employment doctrine.[30] In affirming the Court of Appeals, the Supreme Court held:

> Where a claimant sustains an employment-related injury, after having worked in that line of employment for substantially the whole of the 13-week period immediately preceding the injury, the "total amount of wages earned" under [O.C.G.A. § 34-9-260(1)] must include wages earned by the claimant for work performed for another employer in the same line of employment during the 13 weeks, regardless of the claimant's employment status with that other employer at the time of the injury. In other words, in applying the concurrent similar employment doctrine, we view "concurrent" as indicating that the various jobs were all held within the 13-week period, even if they were not held at the same time nor all held at the time of the injury.[31]

As shown by the above discussion, the *Thomas* decision spoke more to what constitutes "concurrent" employment, rather than "similar" employment.[32] Following the court's decision in *Thomas*, it is now clear that where a claimant performed work for more than one employer during the 13 weeks preceding the accident, such work qualifies as "concurrent." Whether such work is also "similar" remains less clearly defined.[33] It is also worth noting the court in *Thomas* added the combined total wages from both jobs earned for the 13 weeks before the accident and divided by 13 to compute the AWW. While it was not mentioned, this approach seemed to stand in contrast to the one taken in the earlier *O'Kelley* case, where the Court of Appeals of Georgia rejected a similar method in lieu of independently computing the claimant's AWW for each of the two concurrent similar employments and then adding the two resultant figures together.[34]

After establishing that two or more jobs were "concurrent" in time, the claimant's entitlement to benefits at the higher, concurrent rate depends on whether her employment with one employer is found to be "similar" to her employment with the other employer.[35] The Act does not provide a definition for what constitutes "similar" employment, although the Court of Appeals has held that in order for the concurrent similar employee doctrine to apply, the employee need not prove both jobs were identical.[36]

Instead, the employee must show that both jobs were sufficiently similar in nature and character, as well as concurrent in time.[37] For example, in *St. Paul-Mercury Indemnity Co. v. Idov*, the claimant worked as a salesman for two liquor stores and one clothing store. Despite the dissimilar nature of the employers' businesses, the Court of Appeals found the claimant's three roles "similar," as the duties of the claimant were similar for all three jobs.[38] Conversely, in *Black v. American & Foreign Insurance Co.*, the Court of Appeals determined an employee's two positions, as a supervisor for a printing company's finishing department and part-time courier for a second company, were not "similar," even though the two employments shared some commonalities.[39] As such, it is clear that similarities in the duties of a claimant's employments, rather than similarities in the nature of the employers' businesses, will primarily be considered in determining whether such employments are "similar."

Of course, the above discussion is meant only to provide guidance for calculating a claimant's AWW and compensation rate, as well as determining whether the concurrent similar employment doctrine is applicable. More difficult situations can be presented by unique employment scenarios, and when those situations present themselves, please do not hesitate to contact a Swift Currie attorney to discuss the issues and ensure the AWW is properly calculated.

30 *Thomas*, 299 Ga. at 64, 786 S.E.2d at 632.

31 *Id.* (emphasis added).

32 *Thomas*, 299 Ga. at 64, 786 S.E.2d at 632.

33 Larson's Workers' Compensation Law, Ch. 93, § 93.03[1][e]; *see also Black v. Am. & Foreign Ins. Co.*, 123 Ga. App. 133, 179 S.E.2d 679, 684 (1970) ("It is difficult to say how any court, with any degree of uniformity, can judicially determine just when employment is or is not 'similar' [cit. omitted]. All concurrent employment has some similar characteristics and, conversely has some dissimilar characteristics.").

34 *O'Kelley v. Hall Cnty. Bd. of Educ.*, 243 Ga. App. 522, 532 S.E.2d 427 (2000).

35 *St. Paul Fire & Marine Ins. Co. v. Walters*, 141 Ga. App. 579, 234 S.E.2d 157 (1977).

36 *Id.* For example, in SBWC #2010-029180, the administrative law judge (ALJ) held an employee's position as a Bobtail truck driver, making propane deliveries, was similar to his position as a Firefighter, as the employee drove similar trucks in both positions, had similar specialized training, and used similar tools.

37 *St. Paul-Mercury Indem. Co. v. Idov,* 88 Ga. App. 697, 77 S.E.2d 327 (1953).

38 *Id.*

39 123 Ga. App. 133, 133, 179 S.E.2d 679, 680 (1970).

Attorney Bios

John F. Sacha

Partner

John F. Sacha is a Swift Currie partner who defends businesses in general litigation matters, with an emphasis on handling workers' compensation claims. John has counseled clients through hundreds of mediations and hearings before Georgia's State Board of Workers' Compensation (SBWC) to provide efficient and favorable resolutions in matters ranging from minor workplace injuries to catastrophic injury and wrongful death claims. He represents not only insurance companies and third-party administrators, but also hospitals and other healthcare practices, manufacturing facilities and employment agencies.

Throughout his more than 40 years of practice, including his service as Swift Currie's managing partner from 1996 through 2009, John has developed a deep understanding of and extensive relationships with a broad network of experts and key entities that can provide an advantage for clients in the context of a workers' compensation claim. His professional relationships extend to SBWC administrative law judges (ALJs), catastrophic injury health care providers, numerous medical doctors and specialists and other leading professionals within the Georgia medical community.

John leverages his extensive experience to provide creative solutions to each issue that may arise in the context of a workers' compensation matter, whether aggressively defending against a claim or mediating for a favorable resolution. He works with his clients to ensure an efficient and cost-effective outcome in every case. This can include mitigating losses in a claim by selecting the best care providers to address the injured worker's medical needs at a reasonable cost or finding contractors to make necessary renovations at a home for a catastrophically injured employee.

John understands the importance of expedient resolutions in workers' compensation claims, and he provides his clients with the upper hand of a detailed mastery of complex medical documentation in their cases, which is crucial to resolving a matter efficiently with a favorable outcome.

John is a longtime leader in his field and at Swift Currie. He serves as a special assistant to the Georgia attorney general for workers' compensation issues, and he was selected as a leader in law in the "Power Book" published in the *Atlanta Business Chronicle*'s 30th anniversary issue.

An active community servant, John has also been a longstanding leader in several civic organizations. He previously served as the president and director of the Center for Puppetry Arts and on the board of directors for Georgia Citizens for the Arts, Ansley Golf Club and Peachtree Presbyterian Preschool.

Robert R. Potter
Partner

Seasoned attorney Robert "Bobby" R. Potter is a Swift Currie partner who focuses his practice on workers' compensation and government affairs. In his over 40 years as a lawyer, Bobby has handled thousands of cases for insurers and self-insurance groups. In addition, he has built long-term relationships with national insurance companies.

Bobby has experience dealing with the Georgia Department of Insurance, which has helped him effectively work on behalf of his clients. He has also served as chair of the Legislative Committee of the Chairman's Advisory Committee for Workers' Compensation for more than 10 years and a member of the committee for a couple of decades.

Bobby has served as the chairman of the Workers' Compensation Section of the State Bar of Georgia and is a member of the Defense Research Institute (DRI). He also is a co-author of the Georgia Workers' Compensation Law and Practice, which has been updated annually since its original publication in 1981.

He has authored and co-authored numerous law review articles and frequently appears as a speaker both on workers' compensation and legislative topics.

Douglas A. Bennett
Partner

Douglas "Doug" A. Bennett has represented clients in general civil litigation for more than four decades and handles matters related to workers' compensation, automobile litigation, catastrophic injury and wrongful death, premises liability, product liability and trucking and transportation disputes. Doug also serves as a mediator for companies to resolve their disputes outside of the courtroom.

Doug's clients span industry sectors and have included many high-profile businesses, such as industrial resource organizations, large senior health care providers, major insurance carriers and consumer product manufacturers, to name a few.

Doug has represented clients in thousands of high-stakes matters, working to analyze each case objectively, identify strengths and weaknesses and leverage his extensive experience to advise clients on the best path forward.

Doug also lends his broadly informed legal perspective to provide greater access to quality legal representation through his leadership of Swift Currie's pro bono efforts.

Doug is an established leader in his practice area, having served six years on the Executive Committee of the Workers' Compensation Section of the State Bar of Georgia, including one year as the committee's chair. He is also a frequent lecturer on a variety of issues relevant to his clients, including the compensability of heart attacks, ethical considerations and the willful misconduct defense.

Mark J. Goodman

Partner

Mark Goodman defends mid- to large-sized self-insured employers, insurance companies and governmental entities throughout the state of Georgia in workers' compensation claims. He also handles claims brought against nursing homes.

A 35-year veteran of the practice, Mark has handled hundreds of mediations and hearings throughout his career. He currently serves on the Georgia State Board of Workers' Compensation Chairman's Advisory Committee, providing input on legislation, rules and public education for the system.

Mark fights hard for his clients to resolve their issues efficiently and cost effectively, keeping them well informed of the progress of their cases along the way. He strives to maintain a reputation with other attorneys of being fair to work alongside and to oppose, which is reflected in his recognition among the peer-selected *Best Lawyers in America*.

While Mark recognizes the value of his years of experience, he considers his integrity and reputation to be his most important assets as he serves his clients.

R. Briggs Peery

Partner

R. Briggs Peery is a partner with Swift Currie who has more than 32 years of experience representing clients in workers' compensation and general litigation matters. Briggs handles both minor and complex matters for an array of clients from small, family-owned businesses to global companies in the automotive, textile, staffing, cable, food service and insurance industries.

Briggs has a track record of success and prides himself on being organized, efficient, knowledgeable on the law and an outside-of-the-box thinker. He looks at each new case as an opportunity to craft a tailor-made approach to resolve claims and achieve his clients' goals in the most effective and efficient way, whether through mediation or litigation.

Briggs values his client relationships along with his relationships with the workers' compensation judges and claimants' attorneys. Having practiced in the workers' compensation field for so many years, Briggs understands how the court functions and has invaluable knowledge on how to get a claim resolved. Also, he serves as the chairman of the Legal Committee for the board.

Briggs has spoken on workers' compensation topics at multiple claims and state bar seminars, as well as Georgia Chamber of Commerce, municipal, employer and self-insured functions. Additionally, Briggs is involved in workers' compensation issues on a state and national level through his work with the Workers' Compensation Institute.

Michael Ryder
Partner

Mike Ryder is a partner at Swift Currie with more than 30 years of experience practicing primarily in the area of workers' compensation defense. He handles significant legal matters for employers and insurers.

Mike is skilled in every aspect of worker's compensation defense, including interviewing witnesses, crafting settlements, facilitating mediations and aggressively defending clients in the courtroom.

Whether he is developing a creative strategy to solve their legal needs or educating employers on how to effectively train their employees, Mike puts his clients' legal objectives at the forefront of his priorities.

Mike uses his vast knowledge of Georgia's workers' compensation laws to represent his clients in the most efficient and cost-effective manner and, when possible, counsel them on how to avoid litigation in the first place.

Debra D. Chambers
Partner

Debra Chambers has represented clients in workers' compensation matters for more than 26 years. She serves as a valued business partner and litigation counsel for self-insured employers, as well as insurance companies.

Debra represents clients in a diverse spectrum of industries, including sporting goods sales, food sales, air travel, food production, hospitality and insurance, to name a few.

Early in her career, Debra studied medical records and terms daily. This specialized knowledge along with a great memory has benefited her clients in cases where she has identified discrepancies in claimants' stories and recognized symptoms of diseases or illnesses.

Debra has also used defenses based upon the affirmative defenses found in O.C.G.A. § 34-9-17, as well as the standard defenses. She has successfully conducted numerous mediations, both at the State Board and with private mediators, for the benefit of her clients.

As a former sales finance administrator and a contracts representative for Hewlett-Packard, Debra uses her business experience and contract negotiating skills to ensure her clients' interests are always well represented and their desired goals are achieved.

Earlier in her legal career, Debra practiced in the area of insurance defense litigation, employment discrimination and workers' compensation with another Atlanta law firm.

Lisa A. Wade

Partner

Lisa A. Wade is a Swift Currie partner who defends employers in workers' compensation matters when employees allege injuries on the job. As she regularly handles more than 100 matters in a year, she has garnered extensive experience confronting a wide range of complex challenges that can arise in a claim, including simple matters and seven-figure catastrophic claims alike.

Lisa understands the impact a claim can have on her clients' bottom line, especially if it is not resolved quickly, and she works to provide cost-effective solutions — whether representing a Fortune 100 company or a small business that a workers' compensation claim could bankrupt. She has represented a diverse range of clients, including insurers, school systems, hotels and hotel groups, furniture leasing companies, restaurant groups, manufacturers, food processing companies, municipalities and more. She currently is the lead defense counsel for the City of Atlanta's workers' compensation matters.

In addition to her workers' compensation practice, Lisa also has represented clients in general insurance defense litigation. She has handled matters involving premises liability, automobile accidents and uninsured motorist defense litigation, products liability, slip-and-fall, coverage issues and property damage cases.

In her more than 28 years of counseling clients across a broad spectrum of industries, Lisa has become deeply familiar with the specific business needs, job duties and types of injuries that are unique to individual businesses. She provides legal counsel based on her clients' individual needs and objectives to ensure efficient resolution when negotiating a settlement or litigating a claim.

In addition to her deep experience that provides an extensive understanding of clients' businesses, Lisa serves as a trusted partner with her clients by ensuring close communications to establish valued personal and professional relationships. Her focus on client service ensures she fully understands clients' needs and goals, and her extensive background handling every type of challenge in a workers' compensation claim allows her to meet those goals. Lisa regularly provides training to her clients to keep them abreast of recent changes in the law and to respond to any issues her clients may have or experience in their cases.

Lisa is an established leader in workers' compensation law. She formerly was the state liaison for the Defense Research Institute's (DRI) Workers' Compensation Committee and chair of the Outreach Subcommittee of the Diversity Committee. She is also a past chairperson for the Board of Zoning Adjustment for the City of Atlanta and the Workers' Compensation Section of the State Bar of Georgia. She served five terms on the Fee Arbitration Committee of the State Bar of Georgia and was the legal adviser to the Atlanta Board of Education's Civil Service Commission, as well as a hearing officer for cases involving the termination of certificated employees.

Lisa co-chairs the firm's Community Relations Committee and is a past member of the firm's Diversity Committee. She also is a past co-chair of the Finance Committee.

Douglas W. Brown, Jr.

Partner

Douglas "Doug" W. Brown, Jr., is a distinguished attorney and firm leader with nearly 25 years of service at Swift Currie. His profession has been devoted to workers' compensation law at Swift Currie, defending employers and self-insured businesses against workers' compensation claims.

Currently, Doug represents the largest third-party administrators in the nation, leading grocery store chains, carpet manufacturers and security services. He has also represented waste management and construction companies. Nearly 80 percent of his practice is dedicated exclusively to workers' compensation defense.

Handling every aspect of workers' compensation, Doug's practice and counsel is directed and exceptionally served by the scope of Swift Currie's intellectual capital and the diverse practices and experiences of his colleagues. Doug's access to deep pools of resources and diverse points of view create the foundation of his cutting-edge practice.

Doug is deeply experienced with the Georgia Workers' Compensation Act and knowledgeable in the mechanics and nuances of the overlap of workers' compensation with the Americans with Disabilities Act (ADA), Family Medical Leave Act (FMLA), subrogation, and the defense of intoxication and alcohol in the workplace.

A hallmark of his practice, Doug is always available to his clients, providing thorough and precise counsel to minimize client stress. He formerly served as the co-chair of the firm's Community Relations Committee for five years, spearheading a range of projects to advance initiatives for the betterment of the greater Atlanta community and still serves on the committee today.

Timothy C. Lemke

Partner

Swift Currie partner Timothy "Tim" C. Lemke has more than 24 years of experience representing and counseling employers through workers' compensation claims. His clients include several large national retail chains, staffing agencies, waste management and trucking companies whom he has advocated for in approximately 500 workers' compensation hearings and appellate hearings.

Tim takes a vested interest in each client, both professionally and personally, by fully educating himself on their business goals as well as their individual needs. Forming these relationships builds trust, allowing a truly beneficial partnership to begin.

Tim familiarizes himself with each case at hand while analyzing the matter in conjunction with the client's specific business goals. Through this process, he works to offer a more comprehensive approach to both the litigation and resolution of cases. Keeping his clients informed through every step of the process, he steers potential impact away from the business' bottom line and the culture of the company as a whole. This insightful perspective earned Tim recognition as the 2015 Workers' Compensation Attorney of the Year by Georgia Global Law Experts.

After college and prior to joining Swift Currie, Tim pursued his interest in journalism and also worked as an ad sales representative where he learned about client service. Together, the positions taught him the importance of blending study and strategy with rigorous preparation and relationship-building.

Tim proudly began his legal career as a law clerk at Swift Currie where he has continued to practice for almost 25 years. While this is a rare occurrence in the legal industry, it is a testament to Tim's strong level of loyalty and commitment.

James D. Johnson

Partner

Jim Johnson represents businesses, insurance carriers and individuals in litigation matters related to personal injury claims and in workers' compensation claims ranging from minor to catastrophic injuries. Jim has diversified his practice over his 20-year career to include counseling clients in complex liability matters, including automobile accidents, premises liability and other wide-ranging business challenges like cybersecurity.

Jim's clients are businesses from across the spectrum of industries, including national insurance companies and large school districts.

Prior to entering law school, Jim spent several years working as a vocational rehabilitation counselor and vocational expert, including an in-house position at an insurance company managing vocational rehabilitation files. He manages complex workers' compensation claims by using the knowledge he gained from his previous roles providing expert testimony in disability cases, performing job analyses to get injured employees back to work and even attending doctor appointments while acting as a liaison between employers and injured claimants.

Jim puts his clients at the center of each case he handles, ensuring they are well informed, and he develops legal strategies with their individual goals in mind.

Jim's broad experience enables him to provide one-stop service to his clients in need of counsel in both workers' compensation claims and liability defense. His extensive knowledge and background working with the legal issues and complex medical considerations in these cases provides him a masterful understanding of the facts in a claim and gives his clients an upper hand.

At Swift Currie, Jim is a team leader of the Workers' Compensation practice.

Cabell D. Townsend

Partner

Cabell "Cab" Townsend is a partner with Swift Currie and has been defending self-insured employers, insurers and third-party administrators in workers' compensation matters since 1998. His clients include companies in the agricultural, warehousing, trucking, logistics and manufacturing industries.

Cab has more than 20 years of experience handling all aspects of workers' compensation matters. He is skilled at taking depositions, meeting with employers to help them navigate the complexities of a case, defending clients at administrative hearings, handling mediations and all aspects that come with a case. He guides his clients through the legal process, ensuring they feel comfortable and are in the very best position to make an informed decision.

Cab believes in collaborating with his clients to design effective and cost-efficient strategies to obtain their legal objectives. He gets to know each client, understanding their business and their long-term goals and he ensures clear and transparent communication so his clients are empowered to make informed choices based on the realities of their case.

In addition, Cab works diligently to develop productive relationships with all parties in his cases, which ensures efficiency in case handling and the best possible outcomes for his clients.

Over the years, Cab has become well versed in all the rules and regulations of the Georgia State Board of Workers' Compensation. He educates his clients on how to train their employees in order to avoid issues and mitigate risk. He also speaks regularly at client seminars, answering questions and presenting topics to help his clients understand workers' compensation issues and challenges.

Todd A. Brooks

Partner

Todd A. Brooks is a Swift Currie partner who focuses his practice on workers' compensation matters. His clients include national manufacturers, "mom-and-pop" businesses and school systems, as well as city and county governments. In addition to handling client matters, he provides advice to organizations on how they can minimize exposure, mitigate legal risk and better position their businesses to reduce liability.

Todd has handled more than 20 jury trials and over 250 bench trials and hearings before Georgia courts and the State Board of Workers' Compensation. He has also argued before the Georgia Court of Appeals and the Georgia Supreme Court.

Todd's previous experience as a prosecutor brings a unique perspective to his practice. Not only does his experience give him the ability to effectively handle several cases simultaneously and think on his feet, it helped him hone his ability to create winning strategies by exploring different tactical avenues. He prides himself on handling matters in a thoughtful manner in order to devise creative solutions to clients' problems.

Todd also teaches a workers' compensation course at Georgia State University College of Law and regularly speaks on legal issues. In addition, he is a co-author of the *Georgia Workers' Compensation Law and Practice* book, which is updated annually.

Charles E. Harris, IV

Partner

Chad Harris has successfully represented employers and insurance providers in workers' compensation claims exceeding $75 million in exposure during his 16-plus years of experience in the field. Chad assists businesses in navigating overarching risk management challenges, structuring and creating risk control procedures, and providing aggressive and cost-effective defense-of-litigation counsel.

Chad represents a wide range of clients in state, federal and appellate proceedings, including large national banks, big-box retailers, industrial warehouse and logistics companies, staffing and professional employer organizations and some of the largest insurance companies in the United States.

He has also counseled businesses and individuals regarding significant medical claims, such as extensive brain injuries, burns and orthopedic injuries, among other challenging situations.

In addition to his experience as an attorney, Chad leverages a background in accounting for a holistic understanding of his clients' business needs and liability issues.

He is an active leader in the national American Staffing Association and National Association of Professional Employer Organizations and frequently attends legislative meetings in Washington, D.C., to lobby on behalf of his clients.

Michael Rosetti

Partner

Mike Rosetti defends insurers and self-insured businesses in workers' compensation claims. He has successfully resolved through litigation or settlement more than 1,000 claims on behalf of clients. Mike represents clients across a broad spectrum of industries, from manufacturing and forestry to retail and logistics. His clients range from some of the most recognizable Fortune 500 company names to small businesses throughout the state.

Mike's extensive experience navigating challenging workers' compensation claims enables him to provide the most effective solutions in the most complex of matters. He has tried cases before more than a dozen administrative law judges and argued cases before the Georgia Court of Appeals and the Supreme Court of Georgia.

Mike works closely with his clients to ensure they are informed and educated on all matters related to their cases so they can make the best decisions when determining how to proceed.

Well known for his communication skills, Mike has held positions of leadership in the insurance and legal industries. He is highly engaged as a leader with a number of professional organizations. He serves on the board of directors for the Atlanta Bar Association Workers' Compensation Section, is a member of the Legal Steering Committee of the Georgia State Board of Workers' Compensation and a Fellow of the College of Workers' Compensation Lawyers. He is a past co-chair of the Institute of Continuing Legal Education in Georgia – Workers' Compensation Law Institute and has spoken at more than 50 professional and trade association conferences.

Mike's leadership extends to pro bono and charitable work, including his work with Kids' Chance of Georgia, an organization that provides scholarship awards to children whose parents have been injured in work accidents. He is the past chair of the organization's most profitable fundraising dinner and silent auction. He also serves on the board for Holiday Helping Hands, which provides holiday cheer for children whose parents have been injured in industrial accidents.

David L. Black

Partner

David L. Black represents insured and self-insured businesses, as well as insurance providers in civil litigation related to workers' compensation and general liability claims, including counseling clients on exposure in high-stakes disputes. His attention to the details of each case has earned him a strong track record for obtaining favorable results for local, national and international businesses involved in manufacturing, food and poultry processing, trucking, and public and private transportation services including car rental sectors.

David's deep understanding of his cases and their relevant facts better position his clients to succeed in litigation matters. For example, David's investigation and depositions in one workers' compensation claim and related general liability claim led to the discovery that the claim was fraudulent, resulting in its denial and criminal prosecution.

Outside of the office, David is active in serving his community, including counseling low-income families in Atlanta on matters related to housing, landlord-tenant agreements, contracting and insurance. He also is a sponsor of Back on My Feet, an organization that empowers homeless members of the community with professional training and opportunities, as well as support for transitioning from shelters to their own housing.

S. Elizabeth Wilson

Partner

S. Elizabeth "Beth" Wilson defends employers, insurers and self-insureds in workers' compensation matters ranging from minor to catastrophic injuries.

She provides representation in all aspects of claim disputes, having handled hundreds of depositions, mediations, hearings and appellate arguments for her clients, which include national retail chains, food service providers and insurance carriers.

Early in her career, Beth served as staff counsel for an insurance company and gained extensive experience handling each aspect of claims management and hearings. Her in-house role expanded her perspective and informed her hands-on, responsive approach to legal service. She works closely with clients to identify and execute effective litigation strategies in line with their business objectives.

K. Martine Cumbermack

Partner

K. Martine Cumbermack is an experienced litigator with more than 20 years of legal experience. She has provided counsel and representation in workers' compensation matters on behalf of employers, insurance companies, self-insureds and third-party administrators in both Florida and Georgia.

Martine has extensive experience in trial and appellate courts including establishing a clearer precedent at the appellate level in defending death claims in Georgia. Martine has enjoyed successfully litigating workers' compensation cases at trial on various issues including the *Rycroft* defense, notice and intoxication defenses to name a few.

Martine also assists clients with in-house training for employers to help mitigate risk ahead of issues in order to arm businesses with the knowledge to make smart decisions before incidents occur.

Martine is a trusted advisor to her clients and counsels them on the best way forward with their unique legal issues. She focuses on providing great accessibility to answer any questions or discuss ideas with clients, even when she is not working an active case with them, to ensure she is always available to troubleshoot problems or simply advise on issues they may be facing.

Martine serves as a co-chair for the firm's Diversity Committee and represents the firm as a member of the Steering Committee of the State Bar of Georgia Diversity Program. She has also served on the firm's Technology, Hiring, Marketing and Community Relations Committees.

Before joining Swift Currie, Martine served as outside panel counsel and in-house counsel providing workers' compensation defense for a major national insurance company. She has taught as an adjunct professor at the undergraduate and law school levels on subjects including trusts and estates, workers' compensation, criminal and civil procedure. She has also previously litigated cases as a public defender and served as a court-appointed Guardian Ad Litem.

Martine has become an industry leader, regularly writing and presenting locally and nationally on a wide variety of workers' compensation topics, such as employer affirmative defenses, light duty return to work issues, post-hire medical questionnaires, the role of aging employees in workers' compensation and the impact of diversity on claims management, costs and results.

Ann M. Joiner

Partner

Ann M. Joiner is a partner at Swift Currie with more than 10 years of experience practicing primarily in the area of workers' compensation defense. Ann has significant experience representing employers, self-insureds and third-party administrators in numerous workers' compensation claims throughout the state of Georgia. Ann represents clients in the waste removal, retail and food and beverage industries, to name a few.

Ann values developing meaningful relationships in her practice. In addition to her relationships with her clients, Ann also has personal relationships with the claimants' attorneys. Litigation is by nature adversarial, but she believes being civil and professional with opposing counsel garners fruitful results.

Ann is committed to being a trusted partner with great relationships with her clients, and she ensures that she is available whenever they need her. Ann's clients trust her and know she is dedicated to solving their legal issues promptly.

Ann has lived in numerous locations in the Midwest and the South and has had to adapt to different personalities and perspectives. She translates her adaptability into her work life by creating tailor-made strategies for each matter she handles. No two cases are the same. Therefore, she treats each case as a new challenge.

Ann frequently presents to employers and insurers on workers' compensation defense strategies, light duty return to work issues and employer compliance with statutory rules.

Preston D. Holloway

Partner

Preston Holloway defends workers' compensation claims on behalf of employers, insurers, self-insureds and third-party administrators throughout Georgia.

For more than 10 years Preston has represented clients in the insurance, construction and quick-service restaurant sectors. He is also experienced in handling workers' compensation challenges that are unique to staffing agencies. For example, he works with those whose employees can disproportionately hail from troubled backgrounds, who lack training needed to meet heavy-duty job requirements and who receive insufficient supervision.

Preston advises clients to manage risk and resolve disputes in a quick and economical manner, including weighing the costs of litigation against posturing for a favorable settlement. He is experienced in all phases of dispute resolution, having deposed a wide range of witnesses, including medical professionals. In addition to defending claims at the hearing level, he also realizes the value that alternative dispute resolution can have in certain matters.

Before beginning his legal career, Preston studied broadcast journalism and honed many of the skills necessary to effectively understand and litigate workers' compensation claims, including investigation, research and the ability to leverage that information to communicate a compelling narrative.

His priority is to positively position his client in the legal matter and, to that end, he ensures they are well informed throughout the case to best understand their legal options.

Preston brings a service-oriented approach to his practice, providing adaptive and organized legal counsel in the most challenging of cases.

Richard A. Phillips

Partner

Richard A. Phillips is a Swift Currie partner who represents employers through workers' compensation claims in a range of different industries, including manufacturers, hotels, restaurants, nursing homes, construction companies and staffing agencies.

Richard is experienced in handling high-value catastrophic injury, wrongful death and subrogation claims that range from $500 to $3 million. In addition, he has handled matters involving employer claim management, Medicare Set-Aside issues, prevention and safety, and air ambulance Georgia Fee-Schedule litigation.

Richard has unique experiences that have shaped the way he operates his practice, such as working with the Ethics Committee of the State Board of Workers' Compensation. He also served as the general counsel for a few small businesses in the automotive industry. Before becoming an attorney, Richard worked as an account manager for Intuit, Inc., which provides banking solutions for financial institutions.

Richard manages all of his cases in the most cost-effective manner possible depending on the needs of the client whether that means resolving cases through settlements, mediation or litigation. He values client communication and strives to build strong relationships with the organizations he represents.

Amanda M. Conley

Partner

Amanda Conley is a knowledgeable defense attorney with vast experience representing employers and insurers in workers' compensation matters.

She litigates claims on behalf of her clients, which include the largest insurance company in the Southeast and companies in the hospitality, tree service, cable, utility, ride sharing, manufacturing, furniture sales and construction industries.

Amanda has successfully settled or mediated hundreds of cases and prepared countless depositions over the last 10 years. She also routinely attends hearings on behalf of her clients. She has experience with cases involving fraud where she investigated and gathered evidence to prove fraud was committed and sought restitution on behalf of the employer and insurer.

Amanda is a zealous advocate for her clients and uses knowledge from her deep experience and prior work as a claimant's attorney to diligently pursue their desired goals.

Kenneth M. Brock

Partner

Kenneth "Ken" Brock defends insurers, employers, self-insurers and third-party administrators in workers' compensation claims. He identifies cost-effective, legal resolutions through complex negotiations or litigating in the courtroom and he has counseled clients to successfully mitigate damages alleged to be worth hundreds of thousands or even millions of dollars.

Ken has handled hundreds of matters at the trial and appellate level, representing a range of large national businesses, including commercial insurance carriers, residential and commercial construction material manufacturers and distributors, big-box retail and more.

Leveraging his previous experience as senior staff counsel with a national commercial insurer, Ken brings a deep understanding of how insurance companies operate and the financial impact workers' compensation claims can have on an employer's premiums and future coverage considerations. He uses his professional background and more than 25 years in law to analyze cases to determine the best solution with the most financially advantageous outcome for his clients.

Jeff K. Stinson

Partner

Jeff K. Stinson is a Swift Currie partner who has more than 15 years of experience counseling clients through difficult workers' compensation claims and advocating on their behalf, during which he has developed longstanding relationships and become a trusted advisor to his clients.

Jeff's clients include insurance companies and employers in a diverse spectrum of industries, including retail sales, childcare, education, trucking and transportation, and religious institutions, to name a few.

Jeff has tried more than 30 cases and has won the vast majority of them. He also has been successful in working with his clients to mitigate damages.

Jeff's attention to detail and thoroughness ensure his clients' cases are looked at through careful and critical eyes. Because of his diligence, he has been able to spot crucial details or pieces of evidence that often get overlooked.

Jeff prides himself on being responsive and always available for his clients. He also ensures that he understands his clients' business models and goals so he can represent their best interests. Knowing his clients and their businesses is key to his successful practice and enables his ability to provide full-service representation as if he were in-house counsel.

Jeff honed his strong skills in the courtroom when he interned at a solicitor general's office in Douglas County during law school. In this role, he prosecuted misdemeanor crimes, and that raw, hands-on experience helped him become comfortable in any kind of courtroom and fast on his feet in front of judges and juries.

Jeff's passion for workers' compensation extends outside of the courtroom. He is on Swift Currie's planning committee for the firm's workers' compensation seminar, which educates clients on the latest developments in this practice area while keeping them entertained. He has also been a speaker at workers' compensation events around the country

Marion H. Martin
Partner

Marion Handley Martin counsels employers, insurers and self-insureds at all levels of workers' compensation claims throughout the state of Georgia. She has defended clients in thousands of matters, including claims ranging from minor workplace injuries to catastrophic injuries and death claims. She is also experienced in counseling clients in the pursuit of subrogation interests and reimbursement from the Subsequent Injury Trust Fund and has appellate experience before the Court of Appeals of Georgia and the Supreme Court of Georgia.

Marion is experienced in handling workers' compensation claims for clients in a wide range of industries, including restaurant and hospitality, health care management, auto manufacturers, mass transit services, retail, large national insurers and third-party administrators.

Marion works closely with clients to identify the most effective and pragmatic resolution in a dispute, whether negotiating a settlement or litigating for a favorable conclusion.

Informed by her extensive experience navigating challenging workers' compensation claims, Marion remains at the forefront of thought leadership in her field. She frequently writes and speaks and is a co-organizer of Swift Currie's annual workers' compensation client seminar. She was previously a co-author of the *Mercer Law Review*'s Annual Survey of Workers' Compensation Law.

Marion is proficient in French and also speaks some Portuguese.

Mark E. Irby
Partner

Mark E. Irby is a partner at Swift Currie with more than 10 years of defense experience. Mark handles workers' compensation matters on behalf of his clients for two states (Alabama and Georgia), which include employers and insurers in various industries such as, staffing, construction, restaurants, transportation, school boards, health care and many more.

Mark has successfully defended numerous cases before the administrative law judges and Georgia's State Board of Workers' Compensation, and he has a vast amount of experience dealing with workers' compensation claims where fraud is suspected. He looks for the "red flags" in the case and uses his extensive experience and a deep bench of experts in his professional network to resolve the issue to a successful conclusion. Mark also has experience asserting his position on cases before the State Board Appellate Division, Georgia Court of Appeals and Georgia Supreme Court.

Mark is able to defend workers' compensation claims for employers and insurers in Alabama and Georgia and can help employers and insurers who have claims in both states understand the nuances between the laws of each.

Mark knows his clients' legal matters are not their only focus and he ensures that he communicates efficiently, getting to the bottom line and solving their issues without overburdening them. Mark listens to his clients' needs and adds his valued legal expertise to devise a creative strategy to achieve their legal goals.

Mark values his client relationships and strives to be a reliable business partner to help them tackle any legal concerns or issues facing their businesses.

Mark credits his parents with teaching him the value of hard work and dedication at an early age, and he believes that outworking his clients' opponents will always put them in the best possible position. Mark has tried many cases and left no stone unturned in these matters. This persistent mindset has served his clients well as an aggressive advocate on their behalf. He believes there is always a way to win a case, and with perseverance, he will get the best outcome.

Jon W. Spencer
Senior Attorney

Jon W. Spencer handles complex litigation on behalf of employers to help them control workers' compensation costs by defending against fraudulent claims and facilitating legitimate ones. He has experience with the Georgia Workers' Compensation Act and the State Board of Workers' Compensation.

Jon has high-level experience handling large volumes of appeals to the Court of Appeals of Georgia and dozens of cases at the administrative law judge (ALJ) level. He has handled a wide range of uniquely challenging cases, including the closing of extensive and costly workers' compensation claims that had been open for years, usually involving Medicare Set-Asides and various liens.

Jon actively pursues highly successful and cost-saving outcomes for his clients, providing executive counsel and coaching that inspires confidence and minimizes stress. His years of combined experience lend agility to his legal acumen, enhancing his knowledge and capacity to successfully navigate the complexities of workers' compensation legislation and administrative rules.

Before joining Swift Currie in 2007, Jon served as the assistant attorney general for the Missouri Attorney General's Office, representing the state and Second Injury Fund. He also practiced insurance and workers' compensation defense in Missouri and Illinois.

Jennifer L. LaFountaine
Senior Attorney

Jennifer L. LaFountaine is a Swift Currie senior attorney who focuses her practice on the firm's workers' compensation practice area. She handles all stages of litigation in workers' compensation defense matters for employers and insurers with a primary emphasis on high exposure and complex medical claims.

Jennifer's clients include staffing agencies and large chain grocery stores. She previously worked as a mediator and a staff attorney in the Appellate Division of the State Board of Workers' Compensation, which gives her a unique perspective on how to protect her clients from exposure on claims.

Jeremy R. Davis
Senior Attorney

Jeremy R. Davis has more than 15 years of experience defending employers, insurers and third-party administrators in workers' compensation claims and advising on matters related to injury prevention and proper procedure immediately after a work-related accident.

His clients include staffing companies and professional employer organizations and he handles appeals from the Appellate Division of the State Board of Workers' Compensation to the Supreme Court of Georgia.

He has given numerous presentations and written several articles discussing issues affecting workers' compensation claims, including fictional new injuries, the exclusive remedy provision and Medicare Set-Asides.

Jeremy's commitment to his clients' success extends beyond individual claims and litigation. He focuses on maintaining strong relationships to serve as a trusted partner to mitigate future incidents and liability.

Carl "Trey" K. Dowdey

Senior Attorney

Carl "Trey" K. Dowdey, III, represents employers, insurance providers and claims professionals in various workers' compensation cases throughout Alabama. Trey also defends employers against retaliatory discharge and co-employee liability claims, and handles automobile and premises liability defense litigation.

Trey has experience trying both civil jury and bench trials and presenting oral argument to the Eleventh Circuit Court of Appeals. Additionally, Trey is a member of the Judge Advocate General's Corps with the U.S. Army Reserve and is the commander of the 10th Legal Operations Detachment. Previously, he was assigned as the staff judge advocate for the 412th Theater Engineer Command, serving as the senior legal adviser to a two-star general.

Trey has tried dozens of workers' compensation cases and won several defense verdicts, saving clients in excess of $750,000 of alleged damages or workers' compensation benefits in some matters. Additionally, Trey has argued numerous motions in open, federal and bankruptcy court.

Trey has prosecuted dozens of courts-martial cases while on active duty and managed or handled hundreds of administrative separation boards. He has personally taken hundreds of depositions of plaintiffs, witnesses and doctors.

In addition to his extensive litigation experience, Trey was selected for promotion to the rank of colonel in the U.S. Army Reserve. His experience in the U.S. Army Reserve further elevates his ability to communicate with clients and senior business leaders in a clear and concise manner in order to better understand their business objectives and legal needs.

Previously, Trey served as vice-chairman of the Alabama State Bar Military Law Committee, and he has served on the committee for more than 11 years.

Crystal Stevens McElrath

Senior Attorney

Crystal S. McElrath practices workers' compensation defense as well as employment law defense and counseling, specializing in disability and leave laws. She regularly advises, trains and defends clients related to wage and hour, discrimination and human resource laws.

Crystal represents clients in a number of industries including food sales, medical transport services, counseling and staffing.

She also handles numerous workers' compensation matters; Equal Employment Opportunity Commission (EEOC) charges of age, racial and religious discrimination; Fair Labor Standards Act (FLSA) overtime and minimum wage cases; unemployment claims; Family Medical Leave Act (FMLA) lawsuits; drafting of employee handbooks; conducting internal audits; and negotiating employment contracts.

Crystal has successfully tried more than 85 percent of her litigated cases in favor of the employers and insurers she has represented. She has also successfully defended four appeals. Twice, Crystal co-authored amicus briefs to the Supreme Court of Georgia on a question of which workers' compensation statute of limitations applied for claims involving statutory penalties for late indemnity payments. Crystal also co-authored a brief to the Georgia Court of Appeals on the question as to whether medical benefits constitute "compensation" such that payment for medical treatment would trigger the status of limitations for controverting workers' compensation claims.

Crystal's method of thought and mindfulness is highly influenced by her unique perspective developed while studying at Emory University's Center for the Study of Law and Religion. She simultaneously studied law and theology, creating a system of thinking that taught her to deeply examine the meanings of intersections. For clients, this means decisions are always balanced in consideration of business and the personal concerns attached to all outcomes. Crystal seeks a balanced and highly personalized solution for each case, which also drives strategies that balance the client's legal needs with their business' success and profits.

M. Ann McElroy

Senior Attorney

M. Ann McElroy is a senior attorney who defends employers and insurers in workers' compensation claims. Her clients include county governments, insurance companies and large-scale claims management companies, to name a few.

Ranked by her peers among an elite group of attorneys who earn the AV Preeminent Rating, Martindale-Hubbell Peer Review, Ann coauthored an amicus brief to the Court of Appeals of Georgia on behalf of the Georgia Defense Lawyers Association (GDLA) for the prevailing party regarding the issue of whether workers' compensation statute O.C.G.A. § 34-9-221(h) defines "compensation" as to include medical benefits. She has prevailed in multiple hearings in front of various administrative law judges (ALJ).

Attentiveness to all details and putting the needs of clients first is the hallmark of Ann's practice. She is highly skilled in counseling clients regarding difficult decisions of whether a case should be tried or settled. A diligent approach and keen, cost-analysis capabilities support Ann's success.

Before joining Swift Currie, Ann clerked in a medical malpractice firm. In addition, she prosecuted misdemeanors for Fulton County during her third year of law school and after graduation. She also practiced at a criminal defense and plaintiff firm for four years before switching to workers' compensation defense.

Katherine S. Jensen

Senior Attorney

Katherine Soublis Jensen represents insurers, self-insured employers and third-party administrators in defending workers' compensation matters throughout Georgia. Katherine has defended numerous claims on behalf of staffing agencies, retailers, hotels, restaurants, manufacturers, nursing facilities, transportation companies and construction companies. Representing a wide range of clients, from small family-owned companies to multibillion-dollar corporations, she works to ensure that her clients' rights are protected.

Katherine also handles subrogation litigation against third-party tortfeasors in state and superior courts. She has significant experience handling all aspects of litigated and non-litigated cases, including cases at the appellate level.

Whether handling a small workers' compensation claim or one worth hundreds of thousands in exposure, Katherine ensures that employers have a valid posted panel of physicians and that they understand their rights under the Georgia Workers' Compensation Act.

Katherine also defends claims involving willful misconduct, aggravation injuries, idiopathic injuries, catastrophic injuries and injuries involving complex neurological and psychiatric issues.

As a first-generation American and the daughter of small-business owners, Katherine has first-hand experience and understands the concerns of employers can be both monetary and personal.

Katherine's personal experiences have taught her the value of hard work and dedication, and this understanding of tireless advocacy and commitment to her clients has propelled her success in the legal industry.

Before joining Swift Currie in 2011, Katherine served as an assistant district attorney for in DeKalb County under the Georgia Third-Year Practice Act. She graduated, *cum laude*, from the University of Georgia School of Law and, *magna cum laude*, from the University of Georgia.

Thea A. Nanton-Persaud

Senior Attorney

Thea A. Nanton-Persaud is a senior attorney in Swift Currie's workers' compensation practice. She has experience with all aspects of workers' compensation defense and represents employers and workers' compensation insurance companies throughout the state of Georgia, including experience resolving high-dollar, catastrophic claims.

She prides herself on paying close attention to her clients' goals and is driven to get the best results for everyone she represents. Her approach is firm yet fair, which enables her to get the outcomes clients want while garnering the respect of her opponents and judges alike.

She is also registered with the Georgia Commission on Dispute Resolution, which allows her to conduct mediations. Her training as a mediator provides her with unique insight into considering both sides of a claim and allows her to develop creative solutions for claim resolution.

Thea shares her knowledge not only with her clients, but with the community as well. She regularly speaks at educational seminars to provide information on workers' compensation law.

When she is not meeting the needs of her clients, Thea spends time nurturing the next generation of lawyers through mentoring students at Georgia State University College of Law. She is also involved in the mentorship programs at Gate City Bar Association and the Georgia Association of Black Women Attorneys. In addition, Thea serves as a judge for high school mock trial competitions and has been a coach for the Young Lawyers' Division High School Mock Trial Competition.

C. Blake Staten

Associate

Blake Staten is a senior associate in the firm's workers' compensation practice area. He specializes in defending employers and their insurers in cases that involve significant bodily injury and high exposure.

Blake has a diverse client base that includes companies in the poultry processing, wholesale food distribution, trucking, appliance manufacturing, airport management and restaurant industries. He also has experience working with staffing agencies and automobile trade associations.

Blake understands the issues his clients face, which allows him to find efficient and cost-effective solutions to their problems. He works with clients to develop the best legal strategy for proactive handling.

Blake is experienced in handling matters invoking key workers' compensation laws, such as the Civil Practice Act, the Workers' Compensation Act and applicable case law, which allows him to defend cases of various types and sizes.

Marc E. Sirotkin
Associate

Marc E. Sirotkin represents employers and insurance carriers as an insurance defense attorney handling workers' compensation claims.

He serves a range of large businesses, including insurers, airlines, consulting firms, retail stores, electronics manufacturers and technology companies, newspapers, packaging companies, automobile auction companies, nursing homes, environmental design firms and more.

Marc's practice has expanded and grown in scope beyond workers' compensation through the years to include an ancillary practice — handling recovery of client judgments through the garnishment process and protecting judgments in bankruptcy court. Most recently, he has helped clients with matters of catastrophic claims, subrogation, collections, bankruptcy issues and employer/insurer claims.

Swiftly responding to clients, listening carefully and validating their needs with informed responses, Marc is always ready to discuss precision strategies and solutions.

Prior to joining Swift Currie, Marc handled domestic relations and general civil litigation matters.

Emily J. Truitt
Associate

Emily J. Truitt represents employers in workers' compensation claims, whether advising clients in negotiations to settle a case or litigating on their behalf in the courtroom. Her client advocacy includes a strong ability to balance her clients' viewpoints with the best interests of their businesses.

Emily represents clients in the restaurant, hospitality, construction, health care, staffing, manufacturing and retail industries, as well as franchisees.

Emily is a strong communicator and makes every effort to know all the players in the industry, from opposing counsel to other defense attorneys and judges. She leverages these relationships to best represent her clients and achieve their legal objectives.

Emily brings compassion and sensitivity to her work with her clients because she understands how companies can suffer from abuse of workers' compensation benefits.

Joanna S. Jang
Associate

Joanna S. Jang practices primarily in the area of workers' compensation defense representing employers, insurers, self-insureds and third-party administrators in equipment rental, construction, property and hotel management, manufacturing, retail and landscaping industries before the State Board of Workers' Compensation and all appellate courts in Georgia. Joanna also has extensive experience handling federal and state business and commercial litigation cases.

Prior to joining Swift Currie, Joanna also handled federal and state subrogation matters. Fluent in Korean and conversational in Japanese, her language skills give her insight into two distinct cultures, enabling her to work with business leaders from these and other Asian communities.

In addition to Joanna's defense experience, she frequently writes and presents on a variety of workers' compensation issues including light duty return to work and defense strategies, among other topics. She stays abreast of legal changes affecting workers' compensation in order to ensure that her clients are knowledgeable on all aspects of their legal issues.

Joanna also frequently presents workers' compensation-related issues in Korean to Korean business owners and serves on the board of directors for the Korean American Chamber of Commerce of Georgia, which was formed to support the economic growth of the Korean community in the state. She also is a member of South Korea's National Unification Advocacy Council, which advises the nation's president regarding policy development and implementation for peaceful unification of South Korea and North Korea. The group's members are appointed by the president of South Korea.

Joanna understands that both international affairs and workers' compensation matters are complex and stressful for business leaders as well as clients. She is always working to achieve her clients' legal objectives, and she mitigates their stress by minimizing defense and litigation expenses as much as possible.

Jonathan G. Wilson
Associate

Jonathan G. Wilson defends clients in workers' compensation claims, representing employers, insurers, self-insureds and third-party administrators throughout Georgia. In addition, he represents employers as garnishees in garnishment proceedings.

Jonathan handles all aspects of litigated and non-litigated workers' compensation claims, including advising employers on workplace procedures prior to claims arising and helping his clients create policies and manuals that provide consistent guidance for managing workers' compensation matters. He also handles appeals and cases before Georgia's State Board of Workers' Compensation.

Jonathan goes the extra mile, inspiring trust with an integrated and disciplined approach when advising clients on matters related to workers' compensation defense and garnishment proceedings. Every problem is paired with a solution to promote and protect the clients' best interests.

Prior to law school, Jonathan worked as a paralegal in Savannah, Georgia.

Robert W. Smith
Associate

Robert W. Smith is a Swift Currie attorney who represents employers, insurance companies and servicing agents in matters related to Georgia workers' compensation law. He has handled and won multiple evidentiary hearings at the State Board of Workers' Compensation and multiple appeals up to and including the Georgia Court of Appeals. Robert's trial experience is brought to bear in initial investigations, discovery, depositions and settlement negotiations.

Robert seeks to provide lasting business solutions for his clients and counsels them on workers' compensation best practices, risk reduction and compliance with related laws.

Robert aggressively defends his clients' interests while also balancing the practical aspects of cost-effective representation and resolutions that are mindful of the bottom line. He is always accessible and keeps his clients updated every step of the way.

Joanna L. Hair
Associate

Joanna Hair concentrates her practice primarily in the area of workers' compensation claims and represents employers, self-insureds, insurance companies and third-party administrators. In particular, she has significant experience representing staffing agencies and Professional Employer Organizations.

Joanna's deep understanding of workers' compensation matters allows her to adeptly navigate all the nuances of each case. She provides clients with specialized service and focused attention to the minute details that form a workers' compensation dispute, including intentional preparation for appeals or the other next steps that may arise after a matter is resolved.

Joanna understands the importance of getting out ahead of a problem and helping her clients have strong defenses in place before an accident occurs. She does this through client seminars, informational packets and one-on-one consultations.

Workers' compensation cases are a delicate balancing act involving elements of insurance defense, employment law, administrative law and regulatory compliance. As Joanna effectively counsels clients with an understanding of these areas of law, she also coaches clients through the tightrope walk of aggressively defending their case while recognizing the importance of maintaining their public image and respecting their business savvy to ensure the best possible legal and business outcome.

Prior to joining Swift Currie, Joanna worked as a staff attorney to the Honorable Chief Judge Albert B. Collier of Georgia. While in law school, she interned with the Honorable Judge Eugene Verin, the HealthSouth Corporation and the Georgia Department of Education. She also served as the senior associate editor for *The American Journal of Trial Advocacy*, which is published by the Cumberland School of Law at Samford University, Joanna's alma mater.

Seth J. Butler
Associate

Seth J. Butler defends employers, insurers, self-insured parties and third-party administrators in workers' compensation matters. He is experienced handling claims alleging in excess of $250,000 of damages on behalf of Swift Currie clients, which include private companies as well as local government.

Seth worked as a judicial extern to Judge John Goger at Fulton County Superior Court while attending Georgia State University College of Law, which provided him with a unique opportunity to review and evaluate high-profile legal work. He leverages this experience in his current law practice when providing counsel to clients on complex matters.

Additionally, he served as a legislative extern for Representative Wendell Willard, Chairman of the House Judiciary Committee, during the 2016 Legislative Session for the Georgia General Assembly.

Robert K. Young
Associate

Robert "Rob" K. Young practices in the areas of workers' compensation defense and employment law. He represents insurance companies and the management of companies in workers' compensation defense and employment law. He has drafted several successful motions and briefs and made arguments before the Georgia State Board and appellate courts.

Rob has experience as both a plaintiff and defense attorney, which provides a broad, unique perspective and range of skills and experience with workplace-related laws and agencies, including the Georgia State Board of Workers' Compensation, the Fair Labor Standards Act (FLSA) and Title VII of the Civil Rights Act of 1964.

During law school, Rob interned at the Civil Rights Division of the U.S. Department of Justice. In addition, he was an extern for the Honorable Judge Vincent Hill of the U.S. Equal Employment Opportunity Commission Hearings Unit and the Honorable Judge Wendy L. Shoob of the Superior Court of Fulton County.

Tara P. Schlairet

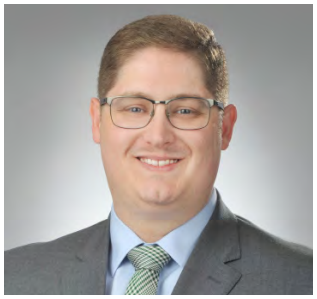
Associate

Tara Peterson Schlairet is an associate in the firm's workers' compensation practice area. She counsels employers and insurers through sensitive issues, claims and employment-related concerns.

Clients face a myriad of issues when they are involved in a workers' compensation claim. Putting clients' best interests at the forefront, Tara guides each client through legal options and nuanced decision-making that leads to best outcomes.

Balancing an aggressive defense perspective against frivolous claims, Tara honors the inherent value of reaching resolutions through collegiality and cooperation. Her approach is client-centric and cultivates integrity in all relationships, leading to favorable and cost-effective results.

Prior to joining the firm in 2018, Tara represented the interests of employers, insurance companies and servicing agents in all aspects of Florida workers' compensation claims.



Pearce W.J. Taylor

Associate

Pearce W. J. Taylor zealously represents employers and insurers in all aspects of Georgia workers' compensation claims.

Pearce is a graduate of the State Bar of Georgia Young Lawyer's Division Leadership Academy.

While in law school, Pearce interned with the Jacksonville (Florida) Ethics Commission. He also received book awards in four classes and was a member of the Moot Court Honor Board, having participated in four national competitions as part of the first-ranked moot court team.

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