

AMERICAN BAR ASSOCIATION
TORT TRIAL & INSURANCE PRACTICE SECTION
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY LAW COMMITTEE
AND THE SECTION OF LABOR AND EMPLOYMENT LAW WORKERS'
COMPENSATION COMMITTEE
PRESENTS

NATIONAL TRENDS AND EMERGING ISSUES IN WORKERS' COMPENSATION

CO-SPONSORED BY WILG
THE COLLEGE OF WORKERS' COMPENSATION
THE NATIONAL CONFERENCE OF THE ADMINISTRATIVE LAW JUDICIARY

March 4–6, 2010
Pointe Hilton at
Tapatio Cliffs Resort
Phoenix, AZ

*UNITING PLAINTIFF,
DEFENSE, INSURANCE,
AND CORPORATE
COUNSEL TO ADVANCE
THE CIVIL JUSTICE
SYSTEM*



ABA Section of
Labor and Employment Law
AMERICAN BAR ASSOCIATION



Dear Friends and Colleagues:

Don't miss this National Program on National Trends and Emerging Issues affecting all State Workers' Compensation Laws. Please be sure to set aside March 4, 5, & 6, 2010 for this event. The program will take place at the newly renovated Pointe Hilton Tapatio Cliffs Resort in Phoenix, Arizona. Having recently received the distinctive AAA Four-Diamond Award, guests can expect an experience made special through quality accommodations and superior service. The seminar will begin Thursday afternoon to allow for morning travel. Friday afternoon will be free and can be used for the resort's expansive water feature; unique dining experiences; championship golf; relaxing spa and salon services; and an array of shopping options.

During this three day program the topics to be discussed involve currently emerging legal and medical issues, many of which are of national importance, not only to practicing lawyers in the field of workers' compensation (and related areas of the law), but to virtually all state legislative bodies, including the United States Congress.

We are very excited about this program since we have assembled some of the Nation's best legal practitioners in the field of workers' compensation. The quality and notoriety of the speakers who have agreed to present at this event are truly second to none.

If you practice workers' compensation law, employment law, represent injured employees, defend insurance companies, self-insured employers, governmental agencies, adjust claims, or practice medicine you cannot afford to miss this program.

Topics to be covered include;

- Erosion of the Exclusive Remedy Doctrine. This panel features one of the defense lawyers in the *Brown v. Cassens Transport RICO* case
- Ethical Issues
- Mediation Strategies and Negotiating Tactics
- Examination of an Orthopedic Surgeon
- ADA/FMLA/WC
- Workers' Compensation Fraud
- Tri-Partied Relationships
- The Affirmative Defense of Intoxication
- Discovery Issues
- New Definitions for Physical Injury

In addition to the excellent substance of this program, the annual **College of Workers' Compensation Lawyers Fellows' Induction Dinner** will be held Saturday night. This is a ticketed event and by invitation only.

This program is a once in a lifetime event which will be attended by workers' compensation attorneys for both plaintiffs and defendants, judges, and many others whose areas of practice are impacted by workers' compensation claims. The atmosphere is always collegial; the discussions intriguing and often spirited. It's bound to be a great event, attended by great people, in a great venue. So mark your calendars for March 4, 5 & 6, 2010. You won't be disappointed!

As Judge E. R. Mills stated in *Singletary v. Mangham Construction*, 418 So.2d 1138 (Fla. 1st DCA, 1982), "Workers' compensation is a very important field of the law, if not the most important. It touches more lives than any other field of the law. It involves the payments of huge sums of money. The welfare of human beings, the success of business, and the pocketbooks of consumers are affected daily by it."

Mike Fish, Chair
ABA TIPS Workers' Compensation & Employers' Liability Committee



John R. Tarpley

TIPS Section Chair
Lewis-King
Nashville, TN

Nora L. Macey

LEL Section Chair
Macey Swanson and Allman
Indianapolis, IN

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Conant Mediation Center
Fort Myers, FL and
Prescott, AZ

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Senior Vice President
Claims Legal
Zenith Insurance Company
Woodland Hills, CA

Dr. James Davidson

Canyon Orthopaedic Surgeons
Phoenix, AZ

Thomas Domer

Domer Law
Milwaukee, WI

Douglas Feldman

Lindner & Marsack, S.C.
Milwaukee, WI

John H. Geaney

Capehart, Scatchard
Mt. Laurel, NJ

Rob Grace

Stiles, Taylor & Grace, P.A.,
Tampa, FL

Allison Hanson

The ALARIS Group, Inc.
Cedarburg, WI

Jodi Harris

Regional Manager
Blue Eagle Investigations
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Executive Vice President
VIAM Mfg. Inc.
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Danial J. Hébert

Charfoos Reiter Peterson Jones
Dorland & Hébert, P.C.
Farmington Hills, MI

Robert G. Heywood

Law Offices of Robert G.
Heywood
Oakland, CA

Honorable Valencia L. Jarvis

Workers' Compensation Board
of Magistrates
Detroit, MI

Leonard T. Jernigan, Jr.

The Jernigan Law Firm
Raleigh, NC

Doug Jones

Jones, Dietz & Swisher
Florence, KY

Deborah G. Kohl

Law Offices of Deborah G. Kohl
Fall River, MA

Janet E. Lanyon

Dean & Fulkerson
Troy, MI

Dorothy Leggett

Staff Counsel at State
Compensation Insurance Fund
Los Angeles, CA

Anthony J. MacAuley

Hanna, Brophy, MacLean,
McAleer & Jensen, LLP
Los Angeles, CA

Robert Meyers

Kiesewetter, Wise, Kaplan,
Prather, PLC
Memphis, TN

Kara Miller

Franklin & Prokopik, P.C.
Easton, MD

Lindsey E. Mills

Scheldrup Blades
Omaha, NE

Leonard Y. Nason

The Law Office of Leonard Y.
Nason, P.C.
Bedford, MA

Mary Jo O'Neill

EEOC Regional Attorney
Phoenix, AZ

Alan Pierce

Alan S. Pierce & Associates
Salem, MA

Greg Presmanes

Bovis, Kyle & Burch, LLC
Atlanta, GA

James A. Reiter

Charfoos Reiter Peterson Jones
Dorland & Hébert, P.C.
Farmington Hills, MI

William L. S. Ross

Calfee, Halter & Griswold LLP
Cleveland, OH

Matthew B. Schiff

Schiff & Hulbert
Chicago, IL

The Honorable Todd B. Seelig

Commonwealth of Pennsylvania
Department of Labor and
Industry
Philadelphia, PA

Karen Smithson-Hughes

Nestle
Glendale, CA

John Sullivan, Jr., Ph.D.

University of Arizona Health
Science Center
Phoenix, AZ

Chester Tennyson, Jr.

The Tennyson Law Offices
Brockton, MA

Honorable David B. Torrey

Pennsylvania Bureau of
Workers' Compensation
Pittsburg, PA

Honorable Harriet Turney

Chief Administrative Law Judge
Industrial Commission
of Arizona
Phoenix, AZ

Charlene Usher

Usher Law Group P.C.
Pomona, CA

Mark Zientz

Law Offices of Mark L. Zientz
Miami, FL

PROGRAM AGENDA

THURSDAY, MARCH 4, 2010

11:00 a.m.–5:15 p.m.

REGISTRATION

1:00 p.m.–1:10 p.m.

INTRODUCTION/WELCOME REMARKS

Chris J. Scheldrup
Program Co-Chair
Scheldrup Blades
Cedar Rapids, IA

1:10 p.m.–1:25 p.m.

SECTION UPDATES FROM LABOR AND EMPLOYMENT LAW (LEL) & TORT TRIAL & INSURANCE PRACTICE SECTION (TIPS)

Nora L. Macey
LEL Section Chair
Macey Swanson and Allman
Indianapolis, IN

John R. Tarpley
TIPS Section Chair
Lewis-King
Nashville, TN

1:30 p.m.–2:45 p.m.

EROSION OF THE EXCLUSIVE REMEDY DOCTRINE

Whether it is through the use of RICO, Bad Faith, or claims of outrageous conduct, the Exclusive Remedy Doctrine continues to be eroded. This panel will address several fact patterns from the perspective of 4 different states. The panel also features one of the defense lawyers in the *Brown v. Cassens Transport* RICO case.

Moderator:

James A. Reiter
Charfoos Reiter Peterson Jones Dorland & Hébert, P.C.
Farmington Hills, MI

Speakers:

Janet E. Lanyon
Dean & Fulkerson
Troy, MI

Chester Tennyson, Jr.
The Tennyson Law Offices
Rockland, MA

Mark Zientz
Law Offices of Mark L. Zientz
Miami, FL

William L. S. Ross
Calfee, Halter & Griswold LLP
Cleveland, OH

2:45 p.m.–3:00 p.m.

BREAK

3:00 p.m.–4:10 p.m.

ETHICAL ISSUES IN WORKERS' COMPENSATION PRACTICE

This interactive session will include a discussion of current ethical issues faced by workers' compensation practitioners. The panel will use hypothetical examples to illustrate some of the difficult ethical dilemmas that arise in the practice.

Moderator:

Dorothy Leggett
Staff Counsel at State Compensation Insurance Fund
Los Angeles, CA

Speakers:

Thomas Domer
Domer Law
Milwaukee, WI

Rob Grace
Stiles, Taylor & Grace, P.A.
Tampa, FL

The Honorable Todd Seelig
Judge at Pennsylvania Department of Labor & Industry
Philadelphia, PA



4:15 p.m.–5:15 p.m.

MEDIATION STRATEGIES AND NEGOTIATING TACTICS

Since most claims resolve by agreement, the art of negotiation plays a huge role in the successful outcome of a case. Learn from some of the best in the business as they discuss good and bad negotiation habits and provide ideas for a successful outcome at mediation.

Moderator:

Anthony J. MacAuley

Hanna, Brophy, MacLean, McAleer & Jensen, LLP
Los Angeles, CA

Speakers:

Jonathan D. Conant

Conant Mediation Center
Fort Myers, FL and Prescott, AZ

Robert G. Heywood

Law Offices of Robert G. Heywood
Oakland, CA

6:00 p.m.–7:30 p.m.

NETWORKING RECEPTION

FRIDAY, MARCH 5, 2010

7:00 a.m.–12:00 p.m.

REGISTRATION

7:15 a.m.–8:15 a.m.

CONTINENTAL BREAKFAST

8:15 a.m.–9:45 a.m.

EXAMINATION OF AN ORTHOPEDIC SURGEON

In this presentation, a local surgeon will describe a test, explain his report, and then submit to a direct and cross examination. This part of the program should prove to be a crowd favorite as a physician and two skilled advocates teach and entertain at the same time.

Moderator:

Kara Miller

Franklin & Prokopik, P.C.
Easton, MD

Speakers:

Dr. James Davidson

Canyon Orthopaedic Surgeons
Phoenix, AZ

Alan S. Pierce

Alan S. Pierce & Associates
Salem, MA

Danial J. Hébert

Charfoos Reiter Peterson Jones Dorland & Hébert, P.C.
Farmington Hills, MI

Honorable Valencia L. Jarvis

Workers' Compensation Board of Magistrates
Detroit, MI

9:45 a.m.–10:30 a.m.

ADA/FMLA/WC. HOW HAS THE BERMUDA TRIANGLE BEEN AFFECTED BY THE ADA AND THE OVER 750 PAGES OF REVISED FMLA REGULATIONS?

This panel of experts will explore the relationship between workers' compensation laws, the recently passed ADA Amending Act, and the newly released 750 pages of FMLA revised regulations. It is impossible to be an effective workers' compensation practitioner without at least a basic understanding of this Bermuda Triangle of laws.

Moderator:

Robert Meyers

Kiesewetter, Wise, Kaplan, Prather, PLC
Memphis, TN

Speakers:

Raymond R. Aranza

Scheldrup Blades
Omaha, NE

John H. Geaney

Capehart, Scatchard
Mt. Laurel, NJ

10:30 a.m.–10:45 a.m.

Keith R. Hayes
Executive Vice President
VIAM Mfg. Inc.
Manchester, TN

Mary Jo O'Neill
EEOC Regional Attorney
Phoenix, AZ

10:45 a.m.–12:00 p.m.

BREAK

FRAUD—EVERYBODY IS DOING IT. WHAT IS THE COST? HOW DO YOU SPOT IT?

In this panel discussion, you will learn about the many different types of workers' compensation fraud, the involved cost, how to spot it, and how it is punished.

Moderator:

Charlene Usher
Usher Law Group P.C.
Pomona, CA

Speakers:

Michael Cunningham
Senior Vice President, Claims Legal
Zenith Insurance Company
Woodland Hills, CA

Leonard T. Jernigan, Jr.
The Jernigan Law Firm
Raleigh, NC

Karen Smithson-Hughes
Nestle
Glendale, CA

Jodi Harris
Regional Manager
Blue Eagle Investigations
Overland Park, KS

6:00 p.m.–7:30 p.m.

NETWORKING RECEPTION

SATURDAY, MARCH 6, 2010

7:30 a.m.–8:00 a.m.

REGISTRATION

7:30 a.m.–8:20 a.m.

CONTINENTAL BREAKFAST

8:30 a.m.–9:30 a.m.

THE FOUR SIDES OF THE TRI-PARTIED RELATIONSHIP

The defense attorney must be careful when navigating the ethical issues involved with representing the employer and getting paid by the insurer. Listen and learn as these panel members explain what pitfalls to avoid and how the plaintiff and plaintiff's attorney are affected.

Moderator:

Leonard Y. Nason
Law Offices of Leonard Y. Nason, PC
Bedford, MA

Speakers:

Ron Anderson
Loss Prevention Manager
Bridgestone Retail Operations
Woodridge, IL

Allison Hanson
The ALARIS Group, Inc.
Cedarburg, WI

Matthew B. Schiff
Schiff & Hulbert
Chicago, IL

Deborah G. Kohl
Law Offices of Deborah G. Kohl
Fall River, MA

9:30 a.m.–10:15 a.m.

THE AFFIRMATIVE DEFENSE OF INTOXICATION. HOW DO DIFFERENT STATES HANDLE THE DEFENSE?

This panel discussion will provide a look into the defense of intoxication across various jurisdictions, including trends in workers' compensation cases, from a practitioner's and toxicologist's perspective.

Moderator:

Lindsey E. Mills
Scheldrup Blades
Omaha, NE

Speakers:

John Sullivan, Jr., Ph.D.
University of Arizona Health Science Center
Phoenix, AZ

Greg Presmanes
Bovis, Kyle & Burch, LLC
Atlanta, GA

Kendall R. Cunningham
Gilliland & Hayes PA
Wichita, KS

10:15 a.m.–10:30 a.m.

BREAK

10:30 a.m.–11:30 a.m.

TO DISCOVER OR NOT DISCOVER? WHO BENEFITS THE MOST?

A panel of experts will discuss how different jurisdictions handle discovery and how the availability of discovery can have both positive and negative consequences.

Moderator:

Doug Jones
Jones, Dietz & Swisher
Florence, KY

Speakers:

Honorable Harriet Turney
Chief Administrative Law Judge
Industrial Commission of Arizona
Phoenix, AZ

Douglas Feldman
Lindner & Marsack, S.C.
Milwaukee, WI

11:30 a.m.–12:30 p.m.

WHAT IS A PHYSICAL INJURY?

Can a mere change in the size of the hypothalamus qualify as a physical injury? What about hormonal, electrical, chemical, or even molecular changes? Should Post Traumatic Stress Disorder be considered a physical injury where such changes can be demonstrated? What about Post Traumatic Embitterment Disorder?

Moderator:

Michael Fish
Fish Nelson, LLC
Birmingham, AL

Speakers:

Leslie M. Altman
Little Mendelson, PC
Minneapolis, MN

Honorable David B. Torrey
Pennsylvania Bureau of Workers' Compensation
Pittsburg, PA

12:30 p.m.–1:30 p.m.

GROUP PLANNING MEETING FOR MIDWINTER 2011

7:00 p.m.

THE COLLEGE OF WORKERS' COMPENSATION LAWYERS INDUCTION CEREMONY AND DINNER (THIS IS A TICKETED EVENT—BY INVITATION ONLY)



REGISTRATION DEADLINE: FEBRUARY 12, 2010

ADVANCE REGISTRATION

Visit the **TIPS National Trends and Emerging Issues in Workers' Compensation** website to register at www.abanet.org/tips or complete the registration form included in this brochure.

The registration fee includes admission to the program, course materials, continental breakfast, breaks, and reception. If you wish to have your name appear on the pre-registration list distributed at the program, **ALL** registration forms must be received no later than the registration deadline of **February 12, 2010**. Registration reservations will be confirmed in writing within 10 business days.

ON-SITE REGISTRATION

On-site registrations will be accepted if space is available. Call Donald Quarles at 312/988-5708 or email quarlesd@staff.abanet.org, 72 hours prior to the program to confirm that space is available. On-site registrants must pay the program fee by credit card or check made payable to the American Bar Association. A \$25 fee will be charged to individuals registering on-site.

CANCELLATION POLICY

No registration fee refunds will be granted for cancellations received after **February 12, 2010**. In order to receive a refund (less a \$100 administrative fee), the ABA must receive written cancellation by **February 12, 2010**. Registrants who are unable to attend may send a substitute or will receive course materials in lieu of a refund.

HOTEL INFORMATION

For Reservations call 800/876-4683 OR 602/866-7500

A limited number of rooms have been blocked for program registrants of the ABA TIPS Workers' Compensation National Program at the Pointe Hilton at Tapatio Cliffs Resort, 11111 North 7th Street, Phoenix, AZ 85020 for a hotel room rate of \$189.00 single/double plus 12.27% tax. For reservations, please call the hotel directly at 800/876-4683 OR 602/866-7500. The room block will be held until exhausted or until **Wednesday, February 10, 2010 at 5:00 p.m. (CST)**. After the meeting specified hotel deadline, reservations will be confirmed based on availability. Please refer to the **ABA TIPS Workers' Compensation National Program** when calling the hotel to make reservations. Hotel check-in is 4:00 p.m. and checkout is 12:00 Noon. All reservations must be guaranteed by credit card or deposit check for one night's room and tax. Individuals with guaranteed reservations must cancel their reservations 72 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.

AIRLINE INFORMATION

Discounted airfares are available from ABA Orbitz For Business including ABA negotiated discounts on American and United Airlines. To book online, go to www.abanet.org/travel > click under the Orbitz For Business logo at the top of the page > click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 1-877-222-4185.

Discounts can also be obtained directly from the carrier.

Following are the ABA discount codes for American and United Airlines under which your reservations need to be purchased in order to receive either the ABA percentage discount or zone fare.

HOTEL DEADLINE: FEBRUARY 10, 2010

FOR 2009

AMERICAN AIRLINES	(800-433-1790)	Code # 20348
UNITED AIRLINES	(800-521-4041)	Code # 5781G
CONTINENTAL AIRLINES	(800-468-7022)	ZCode # ZFD2

Agreement code—BWRKNY

Continental discounts also available at www.continental.com > enter ZFD2BWRKNY in the "offer code box".

FOR 2010

AMERICAN AIRLINES	(800-433-1790)	Code # A1210SS
UNITED AIRLINES	(800-521-4041)	Code # 5781G

CLE INFORMATION

Accreditation will be requested for this program from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check with your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of the program. In order to receive CLE credit, all attorneys will be required to sign in on the sign in sheets and obtain a Uniform Certificate of Attendance. Registration fees must be paid in full before registrants can receive credit. You may contact Donald Quarles at 312/988-5708 two weeks prior to the conference for confirmation of the number of CLE credit hours requested by the ABA or credits approved by any particular state.

MEMBERSHIP INFORMATION

For more information about membership in the ABA or the Tort Trial & Insurance Practice Section (TIPS), please visit us online at www.abanet.org/tips/memberapp.html or call 1-800-285-2221. Membership in TIPS includes three industry-leading periodicals, **discounts of up to 20% on many TIPS CLE programs**, and other career and practice-enhancing benefits. Join TIPS today!

PERSONS WITH DISABILITIES

Services for persons with disabilities are available. If special arrangements are required for an individual to attend this program, please notify the ABA promptly at 312/988-5708. Reasonable advance notice is requested.

GET CONNECTED WITH TIPS!

Information on this and other TIPS CLE programs is available online at www.abanet.org/tips. Visit us and get connected!

SCHOLARSHIPS AVAILABLE!

ATTENTION TIPS MEMBERS: Scholarships are available for all Section activities, courtesy of the TIPS Scholarship Fund. The Fund, established with the International Risk Management Institute ("IRMI") and supported by subscriptions to the IRMI CGL reporter, is intended to increase membership involvement in TIPS' activities among minorities, solo and small firm practitioners, government attorneys, women, and young lawyers by providing financial support to those who would otherwise be unable to participate. To request an application or receive additional information, visit www.abanet.org/tips/scholarship.html or contact Linda Wiley at 312-988-5673.

REGISTRATION FORM

ABA Tort Trial & Insurance Practice Section (TIPS)
National Trends and Emerging Issues in Workers' Compensation
March 4-6, 2010 • Pointe Hilton at Tapatio Cliffs Resort • Phoenix, AZ

REGISTRATION DEADLINE: FEBRUARY 12, 2010 HOTEL DEADLINE: FEBRUARY 10, 2010

1. REGISTRANT: (Please print or type one form per person; photocopy this form for additional registrants)

LAST NAME FIRST NAME MI

NAME AS YOU WISH IT TO APPEAR ON YOUR BADGE

FIRM/COMPANY

WHAT STATE(S) ARE YOU LICENSED IN?

ADDRESS

CITY

STATE

ZIP

(AREA CODE) BUSINESS TELEPHONE

FACSIMILE

E-MAIL ADDRESS

SPOUSE OR GUEST (PRINT AS YOU WISH NAMES TO APPEAR ON NAME BADGE)

Are you attending your first Workers' Compensation National Program? ___Yes ___No

_____ I am a member of the ABA and wish to join the Tort Trial & Insurance Practice Section. I have enclosed a separate check for \$50 made payable to the American Bar Association.

2. REGISTRATION FEES:

	On or Before 2/12/10	After 2/12/10	QTY	TOTAL
Registration Fee per TIPS Member	\$395	\$425	___	___
Registration Fee per LEL Member	\$395	\$425	___	___
General Attendee	\$575	\$600	___	___
Insurance Company/Government Employee	\$400	\$425	___	___
Law Student	\$150	\$150	___	___
Saturday One-Day Rate	\$125	\$125	___	___

3. TOTAL PAYMENT

Total _____

PAYMENT INFORMATION

___Check (made payable to the ABA) ___American Express ___MasterCard ___VISA

Credit Card Number _____ Expiration Date _____

Signature _____

THREE WAYS TO REGISTER

1. **ONLINE:** www.abanet.org/tips

2. **MAIL:** **Workers' Compensation National Program**

American Bar Association
321 North Clark Street
18th Floor
Chicago, IL 60654

3. **FAX:** 312/988-6230

**NATIONAL TRENDS AND
EMERGING ISSUES IN
WORKERS' COMPENSATION**

March 4-6, 2010

**Pointe Hilton at
Tapatio Cliffs Resort
Phoenix, AZ**



American Bar Association
Tort Trial & Insurance Practice Section
Defending Liberty Pursuing Justice
321 North Clark Street
Chicago, Illinois 60654

#107308

