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CHAIRMAN'S COLUMN

It's hard to believe that as this issue of the newsletter is being distributed I will be half way through my term as Chair of your Section. The year got off to a great start with the Section's Luncheon, held at Amelia Island on Friday June 14. At the Luncheon, the Section's Distinguished Service Awards for 2002 were awarded. John F. Sweet of Clements & Sweet, claimant's attorney and John M. Williams, of Savell & Williams, LLP, defense attorney. In addition to presenting this year's recipients with their individual awards, the Section presented Chairman Hall with a permanent Award to be displayed at the State Board's Headquarters in Atlanta, which will list past year's recipients.

Doug Bennett will head this year's Distinguished Service Awards selection committee. Along with Doug, I want to encourage each member of the Section to consider nominating someone for the Awards.

Additionally, the Section continued its strong support of the Kids'Chance, Inc. Scholarship Program by recognizing the Program's 272nd scholarship recipient. Supreme Court Justice Hon. Robert Benham presented Shaye Crews with the 272nd Kids' Chance scholarship, during this year's Luncheon. Shaye, is the daughter of Eugene Crews, a former insurance collection/sales representative, who was catastrophically injured when she was only 11 years old. Shaye graduated from Camden County High School in May 2002 in the top five percentile of her class with a 94.4 GPA. With the help of the Kids' Chance Scholarship, Shaye will be attending Valdosta State University this fall, with the goal of earning a degree in journalism/pre-law. I want to give a special thanks to Lisa Wade for her efforts in making sure the Luncheon was such a success.

I want to thank Steve Welsh of Macon and Nathan Levy of Albany for their service as Chairs of the Workers' Compensation Institute recently held at Sea Pines. I think everyone who attended will agree that they did a fantastic job in putting on this year's Institute. The topics they selected were timely, and the speakers they recruited were top notch. Everyone that I have spoken to, that attended this year's Seminar, has had nothing but positive things to say about the program.

The Section continues work on the publication of our book on the history of Workers' Compensation System in Georgia. When completed, the book will provide a comprehensive

history of the system from its inception through the end of the 20th Century. The purpose of the book is to preserve the legacy of the past and provide inspiration for future generations of lawyers who practice workers' compensation. Proceeds from the sale of the book will be used to provide funds for the Kids' Chance Scholarship Fund.

As everyone is keenly aware, practitioners of workers' compensation are facing a new challenge in handling claims due to the concern of Medicare and its impact on claims. Chairman Hall has appointed a special Commission to study this issue of Medicare "set-asides" in workers' compensation settlements. The goal of the Commission is to try to set up a viable protocol for determining when a set aside trust is needed in a workers' compensation settlement and how to expedite the process with Medicare in those cases where one is needed. The members of the Commission appointed by Hall include: Roslyn Ramsey, head of the Settlement Section of the State Board, and attorneys Mark S. Gannon, Thomas W. Herman, Julie Y. John and Alex Wallach. Consideration is being given by Chairman Hall to adding additional representatives to the Commission from the State Board as well as representatives from CMS/Healthcare Financing Administration. I hope the Committee will be able to provide you with more information about its work in upcoming newsletters.

I would like to say a special word to thanks to the members of this year's Executive Committee: Doug Bennett, Emily George, Luanne Clark, Lee Southwell, Bob Wharton, Shari Miltides, Tim Hanofee and immediate past chair, Mark Gannon. I owe a special debt of gratitude to Mark for all his hard work and dedication to the Section. I am grateful for his leadership and his friendship. I also want to thank members of the Section who gives of their time and talents to make the practice of workers' compensation better in Georgia.

Finally, I would be remiss if I did not remember the passing of two giants in the practice: Lamar Gammage and Buck Benson. We are all better for the work that they did on behalf of the Comp system.

Respectfully Submitted,
Thomas W. Herman

OBSERVATIONS

by Hon. Joseph L. Smith

As of April 2003, I will have served as a member of the State Board of Workers' Compensation for three years. From the time that I was asked to write this article, I thought of some of the observations that I had made during my term of service and I will set some of those observations out below.

First, for a few preliminaries, I practiced law in Jackson, Georgia for a number of years with my good friend and partner, Wilson Bush. Our firm being Bush & Smith, Attorneys, at 464 W. Third Street in Jackson, Georgia. I also served sixteen sessions in the Georgia House of Representatives, representing the 109th District. The 109th District was composed of all of Butts County, a majority of Lamar County and a portion of Henry County. I served as a member of the House Industrial Relations, Banks and Banking, and Appropriations Committees of the House. In my last three years, I served as Chairman of House Industrial Relations Committee and as Chairman of the Criminal Justice Subcommittee of the House Appropriations Committee.

My family and I live on a farm in Flovilla, Georgia, which is south of Jackson, Georgia (near Fresh-Air B-B-Q, I recommend it highly). A great many people ask about Flovilla and I respond that it is pretty much like General Sherman's army left it. The ashes are still smoldering and we are just now bringing the fires under control. In fact, when General Sherman's army came through, this was the first and only traffic tie up that we have had in the City of Flovilla. We are glad that General Sherman and his army are gone and we hope that they do not return anytime soon. In fact, traffic jams are few and far between in Flovilla and if four cars pass down Heard Street (the main street) at one time, it is a major traffic event. On our farm we raise Brangus cattle and hay. Linda and I have four daughters, Valerie, Jennifer, Julie, and Amy, one grandson, Ryan and by the time this article is published, a new granddaughter. Some of my observations as a member of the Board are as follows.

OBSERVATION

I observe in my term of office that the members of the Workers' Comp Bar generally exhibit a very high standard of professionalism. Based upon my years of private practice of law, I am very gratified by this fact. With very few exceptions, I see an exhibition of courtesy and fair dealing between the claimant and defense bar.

OBSERVATION

The employees and staff of the Board are very conscientious, dedicated, courteous and hard working. During my years in the House of Representatives, and especially as a member of the Appropriations Committee, I wondered if the funds were well spent that were appropriated to the Board. When I was appointed to the Board, I made my own investigation as to this matter and I saw that the employees of the Board are hard working and the funds are well spent.

I see the people who work at the Board begin to answer the phone at 8:00 in the morning and continue all day long until 4:30 and they are just as courteous with the last caller as they are with the first. I see Board employees that have an endless supply of forms coming in that have to be filed and processed. I see all other areas of the Board that do their job and do it well.

OBSERVATION

That services at the Board will improve from their present state. There is a movement underway to move to a paperless claims processing system. During the recent seminar, held at the Waverly Hotel, the Board was fortunate to have Mr. Robert Snashall, Chairman of the New York State Workers' Compensation Board make a presentation. The New York Board several years ago instituted paperless claims processing and the system has worked extremely well. The claims are easier to process, faster, and the concerned parties have almost instant access to Board files. While this will be expensive, efforts are underway now to begin changing this process. I was very impressed with what I saw reported from the New York State Board regarding a paperless system. In the long run, this system will be cheaper to operate because it eliminates many costs involved, will be more efficient, and will benefit all involved.

OBSERVATION

Both as a former member of the Georgia General Assembly and now as the Director of the State Board of Workers' Compensation, I have a deep appreciation of the Board's Advisory Committee. Because a great many people who work in the many areas of workers' compensation give of their time, expertise and talents to the Board, the workers' compensation system is better and continues to improve each year.

The Board's yearly legislative package is generally well received by members of the General Assembly and because of the knowledge of all involved in the process has sat down together at the table to have input in the changes to be made. The legislation is seldom amended with

change from its original content. When all interests come together on the Advisory Board, this generally eliminates committee and floor debates and votes wherein House and Senate members are forced to vote against one segment of the industry over another segment of the industry.

CONCLUSION

There are many observations that I can continue to make, but in the interest of brevity, I will add that I am proud and honored to be a part of the Georgia's Workers' Compensation system. I think the system works well and I enjoy working with Judge Carolyn Hall and Judge Viola Drew. One of the great stabilizing factors of the Board is the competent leadership of Chairperson, Judge Carolyn Hall.

MEDIATION

ADR UNIT POLICIES AND PROCEDURES

By Hon.. Beth W. Lammers

In the years since its inception, the Alternative Dispute Resolution (ADR) Unit at the State Board of Workers' Compensation has enjoyed tremendous growth and success. The Unit initially consisted of two Administrative Law Judges and two staff attorneys, handling motions for change of physician/additional treatment and attorney fee approval requests. The Board's mediation program was introduced in 1992. At that time, change of physician requests and issues in catastrophic injury claims were diverted to mediation in an attempt to resolve those issues without the need for an evidentiary hearing or ruling. All mediations were held at the Board's Atlanta office.

Today, when operating at full staff, the ADR Unit consists of seven staff attorney/mediators and two Administrative Law Judges. In addition, several of the Administrative Law Judges, and staff attorneys in other Divisions at the Board, are trained mediators and assist the ADR Unit in addition to handling their own job responsibilities. The scope of our services has expanded as well. In addition to change of physician and attorney fee issues, we now handle virtually any issue that might arise in the context of a workers' compensation claim, except for "change in condition" issues. Our caseload has increased consistently and dramatically since mediation services were first offered. As many as 1000 files have been assigned to ADR in a given month; on average, approximately 600 files per month are logged into the Unit.

The Board is making every effort to meet the increasingly high demand for the Board's mediation services and to process all requests as efficiently and

effectively as possible. As you are no doubt aware, the need for our services must be met in the face of difficult economic times and limited resources. As such, I will attempt to familiarize you with the goals of alternative dispute resolution and provide clarification of the policies and procedures that are in place in the ADR Unit.

In an effort to make mediation as convenient and expeditious as possible for the parties, we schedule mediations throughout the state. Mediation conferences are currently held in sixteen locations around the state. In Atlanta, mediations are scheduled every day; we also have several conference rooms available in Atlanta and are able to conduct a number of mediations simultaneously. Outside of the metro Atlanta area, mediation days are set based on the number of files logged into the Unit from a given geographic area, the availability of a mediator, and the availability of a mediation site.

Thanks to the support of Judge Carolyn Hall, the Chair of the State Board, and the other Directors, a number of the Board's field offices (Macon, Columbus, Gainesville, and Rome) are now configured to include space that is conducive to the privacy requirements and other needs of the mediation process. These new spaces allow the Board to schedule mediation conferences as needed, whereas in the past, we have had to make prior arrangements for the use of borrowed space. Our hope is that as leases come up for renewal, and budget constraints lessen, we will be able to include mediation facilities in all of our field locations.

Our primary goal in ADR is the rapid resolution of disputes. This goal is thwarted when a matter is set and reset on multiple occasions or when a matter is calendared before it is ripe for mediation. When a case falls off the calendar at the last minute, our already limited resources of space and staff cannot be fully utilized. Perhaps more importantly, there are undue and often burdensome delays in the provision of services.

The ADR Unit's current policy is to strictly enforce a limit on the number of resets allowed in a given case before a matter will be taken off the calendar, not to be reset. The number of resets permitted is limited to two: an initial setting, plus one reset per side. Resets will generally be permitted only for a "legal excuse" – that is, a reset will be granted only in the event of a documented legal conflict or leave of absence.

Effective July 1, 2002, Board Rule 102 was amended to provide that the Uniform Rules will apply to the resolution of legal conflicts. That is, the matter that was filed "first in time" will take precedence in reso-

lution of a conflict. The Board Rule does however, allow for some discretion by the AU, so that for instance, a reinstatement of benefits issue could be heard or mediated before a matter involving only an issue of attorney fees or penalties, regardless of when the requests for intervention were filed.

When a claim must be reset, the proper procedure is for the parties or their counsel to contact the Board's ADR Unit via conference call and agree upon a date for the rescheduled conference. When the reset limit is exhausted, the claim will be sent on for a ruling or an evidentiary hearing, as appropriate. In the case of settlement mediations, where there are no other outstanding issues, the claim will be taken off the calendar and returned to the file room. Once the reset limit has been met in a given claim, subsequent mediation requests will not be entertained until the parties certify that they are ready to proceed.

The processing of requests for "all issues" settlement mediations present some additional concerns. The Board's policy has always been, and will continue to be, that a matter will be set for a settlement mediation conference only if all parties agree to a Board facilitated settlement conference.

In an effort to address the problem of a claim occupying a calendar slot before it is ripe for resolution or before the parties are ready to proceed, some new procedures have been instituted and there have been some amendments to the Board Rules in recent months. In regard to the processing of a request for an "all issues settlement," the ADR Unit now requires that before a matter can be placed on a mediation calendar, the parties must certify in writing that the claim is ready for settlement. The certification must include a statement that all parties concur in the request for the settlement mediation and that the employer/insurer's representative has obtained, or will have obtained, settlement authority, by the date of the initial setting of the mediation conference.

If the settlement involves an "SITF Claim", the parties must also certify that the SITF has been notified of the parties' intent to pursue settlement of this matter, that all documentation requested by the SITF has been provided to them, and that the SITF has extended settlement authority or will be in attendance at any mediation conference. Board Rule 100 now provides that the SITF must extend settlement authority to the employer/insurer within two business days of the mediation date or must attend the conference with their settlement authority.

As of July 1, 2002, the newly created Form WC-100, Request for Settlement Mediation, went into effect. While use of this form is not mandatory at this time, a properly completed WC-100 will satisfy the certifi-

cation requirements so that a case can be placed on the mediation calendar.

There has been some confusion about the certification requirement. It should be noted that certification of readiness applies only to those cases where the parties wish to mediate a settlement of the entire claim. In situations where a claim is on a hearing calendar and the parties request that an Administrative Law Judge remove a case from the hearing calendar and transfer the matter for an all issues settlement mediation, the case will not be placed on a mediation calendar until the certification is received in the ADR Unit.

If a matter has been removed from a hearing calendar and transferred to ADR for a settlement conference and the parties are not unsuccessful in settling the entire claim, if there are issues still pending, that matter should be transferring back to the AU to be placed on the next available calendar for hearing. This procedure is especially important in claims where the issue for hearing is an appeal of an Administrative Decision regarding catastrophic designation.

Board Rule 100 requires that, in addition to the attorney of record, employer/insurer shall have in attendance at the mediation conference a representative who has authority to resolve the pending issues. The Board is mindful of the fact that it may be difficult for an insurer's representative to be away from his or her duties all day to attend a mediation. As such, this rule has not been strictly enforced; however, the adjustor's presence is required at settlement mediations,

While tightening of policies and procedures has become necessary, service to all participates in the worker's compensation system and rapid resolution of disputes remains our primary goal. In that regard, please know that ADR staff will do all in our power to accommodate requests. If you have a matter that is ready to proceed, you are encouraged to contact us via conference call and we will work with you to "fit you in" on an existing calendar.

In addition, while the general rule that must be followed is "no mediator shopping", the primary goal of mediation is the resolution of disputes in a fair and impartial forum. It is a fact that there are certain cases that are more likely to resolve when the mediation process includes a sitting judge, some particular level/type of expertise, or a certain personality. If you believe that yours is such a case, you may want to consider communicating that fact to us and we will make an effort to meet your specific needs when scheduling the claim for mediation.

We are also cognizant of the fact that there may be

matters that could easily resolve or move forward merely with some input or guidance from the Board. As always, the Administrative Law Judges (and staff attorneys) within the ADR Unit are available for conferences or mediations via telephone in appropriate cases. Conversely, if you are noticed to attend a mediation conference and believe that the matter is inappropriate for resolution through mediation, you are encouraged to initiate a conference call with either of the Administrative Law Judges (Judge Beth Lammers or Judge Meg Hartin) in the ADR Unit and "make your case" that the matter should be transferred out of the ADR Unit for more expeditious or appropriate handling.

While this situation should be a rare occurrence, given the existing rules and policies, if your case is on a settlement calendar and you are not in agreement that the case should be mediated for settlement, or if you do not have settlement authority, please contact the ADR Unit at your first opportunity and apprise us of the situation. This will allow us to remove the case from the calendar, thus freeing up a mediation slot for parties who are ready to proceed.

The Board's policies and procedures are intended to assist the Board in providing the best possible service to all of the constituents of the Worker's Compensation system. Compliance with the certification requirement and other rules and procedures should allow us to meet our goals of providing quality "customer service" and moving a claim quickly toward resolution. As always, I appreciate your cooperation and your interest in the Board's mediation services and welcome your feedback.

CASE LAW UPDATES

The case of *Jones County Board of Education v. Patterson*, 255 Ga. App. 166 (2002), arises in the context of the any evidence rule. In that case, Patterson worked full-time as a vice principal at a school in Jones County. He also performed maintenance on a part-time basis in the Jones County school system. He injured himself while performing maintenance work. His maintenance work and his work as a vice principal were treated as concurrent dissimilar employment. He received benefits based strictly on his earnings from his maintenance job. These benefits continued to be paid for a number of years. Patterson eventually found a job as a principal at an elementary school in another county. He worked more hours and earned more money in that job than he had in his two previous concurrent dissimilar jobs combined. The Jones County Board of Education requested a hearing to determine that Patterson had under-

gone a change in condition for the better. The evidence presented at that hearing showed that Patterson was not taking any pain medication to treat the symptoms of his injury, that he was not seeking medical treatment for that injury except at the direction of the employer, and that he had been released to return to medium-duty maintenance work. A vocational expert also testified that there were 21 part-time maintenance jobs available in the geographic area which were within Patterson's medical restrictions and abilities. Patterson testified that some of these jobs looked interesting to him, but that he did not have the time or energy to pursue them because of the demands placed on him by his full-time employment. Based on this evidence, the administrative law judge and the Appellate Division found that Patterson had undergone a change in condition for the better. The superior court reversed for reasons which the court of appeals did not enumerate. The court of appeals reversed the judgment of the superior court. The court of appeals strongly stated that the evidence in this record clearly supported the findings made by the administrative law judge and the Appellate Division. The court of appeals further stated that the superior court should have affirmed the Appellate Division's decision based on the any evidence rule. It should be noted that the evidence in this case limited itself to Patterson's part-time employment, and made only tangential reference to his full-time concurrent dissimilar employment. It should also be noted that, because this is an any evidence case, it is highly likely that any holdings in this case will be limited to the particular unique facts of this case.

The case of *WAGA-TV~ Inc. v. Yang*, 256 Ga. App. 224 (2002), also deals with the issue of change in condition. In that case, Yang was employed by WAGA as a camera operator. He was injured while filming a high school football game in 1986. He returned to work with WAGA on a limited basis and received temporary partial disability benefits. In 1991, his position was eliminated and he was laid off along with a number of other people. At that time, the employer increased his benefits to total disability benefits. After being laid off, Yang began performing work for his own video production company. He performed a great deal of work for the corporation, and traveled extensively on behalf of the corporation. He was the sole owner of the corporation, and his wife, the bookkeeper, was the only other employee of the corporation. Although the corporation had large gross revenues, Yang contended that it made no profit, and even contended that he had to make loans out of his personal assets to the corporation in order for the corporation to remain in business. In 1998, the employer requested a hearing in order to

demonstrate a change in condition for the better and to obtain authorization to suspend payment of total disability benefits. Based on the evidence of the extent of Yang's activities, the revenues created by the corporation, and the lack of corporate profits, the administrative law judge found that Yang had undergone a change in condition from total disability to temporary partial disability. Based on the fact that Yang was making loans out of his personal assets to keep the corporation in business, the administrative law judge, in the exercise of his discretion, did not order Yang to reimburse the employer for the difference between the total disability benefits he had received and the temporary partial disability benefits to which he was actually entitled. The administrative law judge did allow the difference between total and temporary partial disability benefits to act as a credit against any future liability for disability benefits. The Appellate Division affirmed, but the superior court reversed. The superior court cited *Smith v. Lockheed-Georgia Company*, 185 Ga. App. 869 (1988) for the proposition that total disability benefits remained payable in spite of Yang's ability to work because of the lack of profit from his business. *Smith*, supra, does not stand for this proposition. That case held that a change in condition had been demonstrated when the employee started a business following his injury. The extent of the economic disability was measured by the net income not the gross receipts, of the business. The superior court thus misapplied *Smith*. The court of appeals reversed the judgment of the superior court. The court of appeals ruled that the 1978 amendment to what is now code section 34-9-104 changed the definition of a change in condition. Prior to that time, at least since 1968, a change in condition had been defined as solely and economic change based on an employee's ability to work or continue to work for the same or another employer or inability to work or continue to work for the same or another employer. In 1978, the concept of wage-earning capacity was added to the definition. The court of appeals stated that there is a distinction between the ability to work and the ability to earn. It was clear that Yang had the ability to work. The issue in this case was whether he had the ability to earn. Based on the evidence presented, the court of appeals ruled that the administrative law judge and the Appellate Division properly ruled that Yang had an ability to earn but did not have an ability to make a profit. Therefore, the administrative law judge and the Appellate Division correctly ruled that Yang underwent a change in condition from total disability to temporary partial disability. In reaching this conclusion, the court of appeals held that *Smith v. Lockheed-*

Georgia Company, supra, did not apply to this case. The only obvious distinction between the two cases is that the business in *Yang* was incorporated, while the business in *Smith* was not. Both cases involved injuries which occurred after the 1978 change in the definition of a change in condition. The issue in both was how to determine the extent of temporary partial disability. Both cases based this determination on net income, not gross receipts.

In *Ridley v. Monroe*, Ct. App. No. A02A0243, decided July 2, 2002, the court of appeals issued a landmark decision in the exclusive-remedy area. In that case, plaintiff was a passenger in a car driven by a co-worker (the defendant). They were involved in a collision and plaintiff was injured. Although they were on a scheduled lunch break at the time, plaintiff originally contended that she was performing a work-related errand at the time and that the collision was therefore compensable. The employer originally controverted the claim, but eventually the claim was settled on a no-liability stipulation. The Board award approving the no-liability stipulation recited that the parties had agreed that this claim was not covered by workers' compensation law and denied the claim. Money did change hands, however. The payment was made pursuant to a separate document, a covenant not to appeal the award denying the claim. Plaintiff then filed this tort action against defendant. Defendant moved for summary judgment based on the exclusion-remedy provision of the workers' compensation law. The trial court granted summary judgment. On appeal, the majority of the court of appeals affirmed. The majority held that even though the workers' compensation claim was settled on a no-liability basis, payment was nevertheless made and that payment was plaintiff's exclusive remedy. The majority ruled that payment made pursuant to any kind of workers' compensation settlement, liability or no-liability, were payments made pursuant to the workers' compensation law and were therefore subject to the exclusive-remedy provisions of that law. The majority pointed out that the amendment to code section 34-9-15 effective July 1, 2000 authorized the Board to approve no-liability settlements. The majority further noted that when the legislature enacted this amendment, it made no provision exempting payments made pursuant to a no-liability settlement from the exclusive-remedy provisions of the workers' compensation law. The majority stated that if such an exemption were to be made, the legislature would have to make it. Two judges dissented. They pointed out that the 2000 amendment merely codified procedure which had been in place for many years. They further point-

ed out that an award approving a no-liability settlement recites that the claim is denied. The dissenters stated that such an award is a ruling that the claim is not covered under the workers' compensation law. Claims not covered under the workers' compensation law are not subject to the exclusive-remedy provision of that law.

Therefore, the dissenters would have ruled that a claim which is settled on a no-liability basis is not subject to the exclusive remedy provision of the workers' compensation law. Although it is impossible to predict how the supreme court would rule on a request for certiorari, it would appear to be highly likely that such a request will be made in this case.

The case of *Johnson v. Publix Super Market, Ct. App. No. A02A0428*, decided July 16, 2002, is a major landmark decision with regard to whether an injury arises out of employment. In that case, employee worked as a cashier. Shortly before closing time, she received permission from her supervisor to retrieve personal items from the rear of the store. She locked her register but did not close it out so that she could serve customers if the need arose. As she was returning from the rear of the store, she was hurrying to reach her register and was checking to see that the aisle was clear of obstructions (as she had been trained to do by employer) when she slipped, fell, and broke her leg. Although the floor was of terrazzo construction, all the testimony in the record indicated that the floor at the location where employee fell was not wet, slick, or rough. The evidence also did not indicate that there was any object on the floor for which employee might have tripped. Employee filed a workers' compensation claim which employer/insurer controverted. The only issue in the claim was whether employee's accident and injury arose out of (it was stipulated that they arose in the course of) her employment. The administrative law judge found that employee's accident and injury arose of her employment. This finding was based at least in part on a finding that terrazzo floors are slick. The Appellate Division affirmed, but the superior court reversed. The superior court ruled that there was no evidence in the record to support the findings of the administrative law judge, especially the finding that terrazzo floors are slick. The court of appeals granted discretionary appeal and reversed by 9-3 vote. A six-judge majority wrote an opinion which expanded the positional risk doctrine. The majority began by pointing out that it is possible to take judicial notice of facts which are undisputed and of common knowledge. They also stated that the determination that terrazzo floors are slick is not such an undisputed fact

which is of common knowledge and could not be judicially noticed. Although this holding would appear to support the judgment of the superior court, the majority went on to state that it was not relevant whether the floor where employee fell was slick or not. The majority stated that employer/insurer appeared to be treating this claim as an idiopathic (cause unknown) fall. Employer/insurer cited cases which held that idiopathic falls did not arise out of an employee's employment and were not compensable. Cases specifically mentioned were *Borden Foods, Inc. v. Dorsey* 112 Ga. App. 838 (1965) and *Prudential Bache Securities v. Moore*, 219 Ga. App. 847 (1995). The majority stated that *Borden Foods, Inc. v. Dorsey*, supra, was based in large part on a holding that in order to arise out of employment, an accident and injury had to result from a risk peculiar to the employment. A risk peculiar to the employment was required in order to find that there was a causal connection between the working conditions and the accident and injury so that the accident and injury could be said to arise out of employment. This peculiar-risk doctrine specifically rejected by a unanimous court of appeals in *National Fire Insurance Company v. Edwards*, 152 Ga. App. 566 (1979). That case dealt with an injury resulting from the collapse of a wall of a building caused by a tornado. In that case, the court of appeals adopted as the law of Georgia the positional risk doctrine. Under that doctrine, an accident and injury arose out of employment if the employee's employment required the employee to be in the place where the danger manifested itself at the time the danger manifested itself and brought the employee within range of the danger. The Edwards specifically overruled two prior peculiar-risk decisions, and stated that any other case which was inconsistent with the positional risk doctrine was also overruled. There may have been a question as to whether the Edwards case was to be applied narrowly or broadly, but that question was resolved in *DeKalb Collision Center v. Foster*, 254 Ga. App. 477 (2002). The majority held that Foster called for a broad application of the positional risk doctrine. Under this broad application, the employee's employment in Johnson required her to be in the place where the danger of a slip and fall manifested itself at the time the danger manifested itself and brought her within range of that danger. Therefore, her accident and injury arose out of her employment even though any member of the general public similarly situated would have been exposed to the same danger. The majority specifically overruled *Prudential Bache Securities v. Moore*, supra, because it relied on *Borden Foods, Inc. v. Dorsey*, supra, a peculiar-risk case, and was therefore itself a

peculiar-risk case. The majority also pointed out that *Borden Foods, Inc. v. Dorsey*, supra, had been overruled by *National Fire Insurance Company v. Edwards*, supra, even though it was not specifically mentioned in the *Edwards* case. The majority also interpreted *United States Casualty Company v. Richardson*, 75 Ga. App. 496 (1947), which might appear to be an idiopathic-fall case, as a positional risk case. It thus appears that so-called idiopathic falls are now compensable under the positional risk doctrine. Three judges concurred in the judgment only. Three other judges dissented. The dissenters stated that even under the positional risk doctrine, there had to be some causal connection between an employee's working conditions and the employee's accident and injury in this case, in which the floor on which the employee slipped and fell was not wet, slick, or rough and there was no object over which the employee tripped, there was no such causal connection demonstrated by the record in this case. The dissenters stated that there was certainly no evidence in the record to support a finding that terrazzo floors are in and of themselves slick. This fact was certainly not so undisputed and of such common knowledge that it could be judicially noticed. The dissenters considered the finding that terrazzo floors are slick to be essential to the administrative law judge's determination that employee's accident and injury arose out of her employment. The dissenters therefore believed that the superior court correctly ruled that there was no evidence in the record to support the decision of the administrative law judge and the Appellate Division and correctly reversed that decision. Once again, although the outcome of an application for certiorari is impossible to predict, it would appear highly likely that such an application will be filed in this case.

The case of *City of Poulan v. Hodge*, S. Ct. No. S02G0083, decided September 16, 2002, deals with the application of the change in condition statute of limitations applicable to injuries occurring on or before June 30, 1990. That case involved the employee's request for permanent partial disability benefits. The employee suffered his original injury in 1989 and last received any income benefits in 1992. He sought benefits for permanent partial disability based on a rating given in 1999. The administrative law judge found that permanent partial disability did not exist at the time benefits were last paid in 1992 and did not come into existence within two years thereafter. For this reason, the administrative law judge found that no benefits were potentially due and that the employee's later claim was time-barred. The employee contended that there had

been no finding that he had reached maximum medical improvement prior to 1999, and for that reason permanent partial disability benefits remained potentially due. The administrative law judge and the Appellate Division rejected this contention. The superior court it and reversed the decision of the Appellate Division. The court of appeals held that a finding of maximum medical improvement was a legal condition precedent to a finding of permanent partial disability and that in the absence of such a finding, benefits might remain potentially due. This holding, which is limited to injuries which occurred on or before June 30, 1990, was based on the court's reading of *State of Georgia v. Birdett*, 181 Ga. App. 356 (1986), as standing for this proposition. The court of appeals reversed the superior court's determination that the statute of limitation was tolled as a matter of law and remanded the case to the Appellate Division for further findings of fact based on a correct reading of the law. The Supreme Court granted certiorari. The supreme court ruled that the court of appeals had correctly stated that the statute of limitation was not tolled as a matter of law in this case, the supreme court further ruled that the court of appeals erred in stating that a finding of maximum medical improvement was a legal condition precedent to a finding of the extent of permanent partial disability. The supreme court stated that it was a misinterpretation to state that *State of Georgia v. Birdett*, supra, stood for this proposition. The supreme court noted that the Birdett case involved a determination that the employee had not carried her burden of demonstrating she had any permanent partial disability. The failure to demonstrate that the employee had reached maximum medical improvement was one factor which was considered in reaching the determination that the employee had not proved that she had any permanent partial disability. It was in this context that the court of appeals stated in Birdett that without a finding of maximum medical improvement, it may not be possible to calculate whether any degree of permanent partial disability exists. The supreme court stated that the court of appeals took the Birdett case out of context in reaching its erroneous conclusion that a finding that maximum medical improvement had been reached was a legal condition precedent to a finding of permanent partial disability. It is now known that the existence of maximum medical improvement is one factor among others which enters into the factual determination of whether and to what extent permanent partial disability exists.

There were two important holdings in the case of *D.W.Adcock, M. D.. P. C. v. Adcock*, Ct. App. No.

A02A1634, decided October 2, 2002. In that case, Dr. Adcock was an orthopedic surgeon employed by his own professional corporation. Over a period of twenty-five years, he developed what the administrative law judge and the Appellate Division characterized as a skin condition caused by irritation from scrubbing prior to surgery and aggravated by continuous scrubbing between examinations of patients. This skin condition, which was eventually diagnosed as eczema or contact dermatitis, progressed to the point that Dr. Adcock was no longer able to practice medicine. He notified his workers' compensation insurer of this fact. His workers' compensation insurer inaccurately (or falsely, as stated by the court of appeals) told him that this injury did not occur during the period of time during which his current workers' compensation carrier provided coverage. Dr. Adcock was referred to his previous workers' compensation insurer. The previous insurer made inquiries received additional information, and eventually denied liability for the claim. This denial occurred more than one year after Dr. Adcock had ceased to work. Dr. Adcock then went back to his current carrier. After further inquiries and the receipt of further information, the current carrier eventually denied the claim based on the running of the one-year statute of limitation. The administrative law judge and the Appellate Division found that the insurer was estopped to raise the statute of limitation defense because of its conduct in inaccurately (or falsely) informing

Dr. Adcock that his injury did not occur during the period of time covered by the current insurer so that he was misled into not filing a timely claim. The administrative law judge and the Appellate Division further found that Dr. Adcock did not suffer from an occupational disease but did suffer from a skin condition which was an injury by accident caused by a series of cumulative irritations and aggravations during the period of his employment. The superior court affirmed the Appellate Division's decision, and the court of appeals granted discretionary appeal. The court of appeals found that the superior court properly affirmed the Appellate Division based on the any evidence rule. There was evidence in the record to support the finding that the insurer did indeed mislead, intentionally or not, Dr. Adcock into postponing the filing of his claim. There was also evidence to support the finding that his skin condition was not an occupational disease but was an injury by accident resulting from a long series of cumulative work-related irritations and aggravations of that condition. After this decision, it can no longer be argued that eczema and dermatitis are occupational diseases as a matter of law. The court of appeals has now held that these conditions were properly characterized in this case as an injury by accident, i.e., a skin condition resulting from a cumulative series of work-related irritations and aggravations.

UPDATE OF GEORGIA WORKERS' COMPENSATION SUBROGATION UNDER O.C.G.A. § 34-9-11.1

By Stephen E. Garner

There have been several new cases of importance in the area of Workers' Compensation subrogation over the past year.

In the case of *Canal Insurance Company vs. Liberty Mutual Insurance*, Court of Appeals Case No. A02A1373 (decided 8/1/02); the Court of Appeals found that the trial court had properly granted summary judgment to the liability insurer in an action that had been brought against them by the workers' compensation insurance carrier. The claimant had previously settled their third-party liability claim against the liability carrier and designated that all funds were to be allocated for pain and suffering only. The workers' compensation insurer had failed to intervene in the initial action. After the settlement between the claimant and the liability carrier, that action was dismissed with prejudice. The workers' compensation insurance carrier then filed suit against the liability carrier from a theory that the workers' compensation carrier had failed to honor their subrogation lien, although no one had made any agreement to protect the subrogation lien.

The Court found that since the workers' compensation carrier did not intervene or otherwise seek to protect in court its derivative subrogation right, there was no evidence that the claimant's recovery by settlement with the tort-feasor consisted of anything other than noneconomic damages. The workers' compensation carrier could not assert a subrogation lien against those non-economic damages and so the dismissal of the case on summary judgment was affirmed. This is an important case to claimant's

lawyers because it will no doubt be cited for the proposition that allocation of the settlement proceeds for pain and suffering only will be honored as prima facie valid. However, it should be noted that the special damages in this case exceeded the total amount of the settlement, and it is anticipated that workers' compensation carriers will try and distinguish this case on that basis.

In the case of *Johnson vs. Comcar Industries, Inc.*, 252 Ga. App. 625 (2001), the Court of Appeals held that benefits paid under another state's workers' compensation system did not provide a basis for subrogation under the Georgia Workers' Compensation Act.

in the case of *Hartford Insurance Company vs. Federal Express Corp*, 252 Ga. App. 520 (2002), a Workers' Compensation carrier brought an action against the Claimant to enforce a subrogation lien. Following a bench trial on this issue, the trial court found that the Workers' Compensation carrier did not carry its burden of showing that the Claimant had been fully compensated for his injury, and thus the carrier's subrogation lien was unenforceable. Credible evidence indicated that the Claimant's injuries were severe, that he needed continuing treatment which would subject him to future medical expenses, lost wages and pain and suffering, in that case, the Workers' Compensation carrier paid a total of \$6.5, 170.86 in Workers' Compensation benefits (which included a \$20,000.00 settlement). The workers' compensation carrier had intervened in the personal injury case but before the case reached trial the Claimant settled his personal injury case for \$75,000.00. The trial court found that the Claimant had permanent injuries and was not fully compensated. This was upheld on appeal since there was some evidence to support the trial court's finding. In the case of *CGU Insurance Company vs. Sabel Industries Inc.*, 255 Ga App. 236 (2002), The trial court granted a motion for directed verdict (technically an involuntary dismissal) asserted by the worker and his wife which resulted in the dissolving of the workers' compensation carrier's subrogation lien. The trial court found that the workers' compensation carrier failed to meet the burden of proving that the worker had been fully and completely compensated for his losses. Therefore, they were prevented from asserting a subrogation lien against the settlement proceeds in the third-party liability case.

This case is very instructive as to potential problems with evidence presented by a workers' compensation carrier attempting to establish full and complete compensation. The claimant was catastrophically injured in a motor vehicle accident. One of his legs was eventually amputated and he had several additional surgeries. After approximately one year of disability, the claimant returned to his pre-injury wage. The workers' compensation carrier had paid \$212,333.92 in medical expenses, TTD, and PPD benefits. Following a mediation, the claimants had settled the third-party liability case for \$4.5 million. The subrogation lien was not addressed at the mediation. Afterwards the claimant and his wife filed a motion to confirm the settlement and to add the workers' compensation carrier as a party defendant, and also sought to dissolve the Workers' Compensation lien. The workers' compensation carrier filed a Motion to Intervene which was granted.

The trial court conducted a hearing to determine whether COU was entitled to recover under its subrogation lien. CGU presented expert testimony from a certified rehabilitation registered nurse/rehabilitation consultant as well as a mediator/arbitrator. The trial court found that CGU's "experts, both of them, speculated on things they should know and were missing things that were essential" and that the "experts were missing some key information that would have made their numbers something more reliable than speculation." Based on this, as well as the fact that there was insufficient evidence presented concerning the value of the loss of consortium claim, the trial court found that the workers' compensation carrier had failed to carry their burden of proof. The Court of Appeals affirmed this decision.

They also commented on the subrogation lien for future benefits. The Court of Appeals found that the workers' compensation carrier was not authorized under the Workers' Compensation Act to assert a lien against the claimant's settlement against third-parties with respect to benefits that had not yet been paid to the claimant. In looking at the literal language of the statute, they noted that the lien arises when the employer's liability has been fully or partially paid and recites that the employer's liability shall not exceed the actual amount of compensation paid. In noting that the Workers' Compensation Act was in derogation of the common law, but is still highly remedial in nature, the Court said "it must be construed liberally in favor of the claimant in order to accomplish its beneficent purposes." However, a caution should be added, that in dicta the Court said that "after benefits have been paid at which time they are no longer future benefits, and employer/insurer should be permitted to assert and seek recover)' on a subrogation lien to the extent of the benefits paid." 255 Ga. App. at 244.

In the case of *Georgia Electric Membership Corporation vs. Hi-Ranger, Inc.* 275 Ga. 197 (2002), the claimant settled his claim against the third-party. The employer/insurer brought a claim for repayment of the workers' compensation benefits against a third-party tortfeasor. In a question certified by the 11th Circuit Court of Appeals, the Georgia Supreme Court held that the subrogation lien was not extinguished, by the claimant's settlement of his claims against the third-party and execution of a limited release. The claimant settled this case against the third-party in exchange for a limited release. The release agreement between the claimant and the third-party specified that the employer's claim would remain pending, and the employee waived his right to insist that his employer prove that he was fully and completely compensated under the Workers' Compensation Act. The Georgia Supreme Court found that the language of the limited release agreement prevented the lien from being extinguished by the settlement.

In the case of *City of Warner Robbins vs. Baker.* 253 Ga. App. 601 (2002). the claimant filed a Motion to Extinguish the Employer's Subrogation Lien against his settlement with the third-party tortfeasor. The trial court granted the motion, and the Court of Appeals affirmed, finding that the employer had failed to meet their burden of proving the claimant was fully and completely compensated. In affirming, the Court noted the employer had not come forward with any evidence showing that the claimant was fully and completely compensated for his injury. The Court noted that while the workers' compensation carrier had an absolute right to intervene in both trial and settlement negotiations, the existence of the lien itself was not dispositive and the employer/insurer must act to protect this lien. In this case, there was only a \$90,000.00 liability settlement. The lien amount was \$48,977.25, the claimant had two back surgeries and incurred medical expenses of over \$135,000.00. The claimant also had possible future medical expenses.

In the case of *International Maintenance Corp. vs. Inland Paper and Packaging Inc.*, Georgia Court of Appeals Case # AO2AO 105 (decided 6/26/02), there were multiple defendants in the liability case where the claimant sustained a severed spinal cord injury which rendered him paralyzed from the waist down. The claimant settled with two of these defendants and the trial court approved the dismissal of those two defendants from the case. The Court of Appeals found that the trial court had erred in entering an order dismissing an intervention and leaving them to prosecute a separate action if they wished to perfect and enforce a subrogation lien. The Court of Appeals noted that the claimant had the right to settle with one or more defendants and the trial court did not abuse its discretion by approving the dismissals. They further noted there was no authority requiring the proceeds to be placed in a constructive trust as requested by the workers' compensation carrier. When a settlement is reached or a judgment is entered in a suit governed by OCGA ~34-9-1 1.1(b) the lien attaches to the recovery, "that is to the money now in the hands of the injured employee." After the employee has settled with the Defendant, and the lien is attached to the proceeds, there is no longer any purpose for intervention. The employer/insurer cannot continue to pursue a claim against that Defendant when the intervention was pursuant to sub-section b. A different result would occur if the claim was brought under sub-section c. Likewise a different result might obtain in a case where an employee settled with a tortfeasor without any lawsuit being brought.

In the case of *P.F Moon & Company Inc. vs. Payne*, 268 Ga. App. 191 (2002), the claimant and their spouse filed a Motion to Intervene in a Workers' Compensation subrogation action which the employer had filed against the tortfeasors that had allegedly caused the Claimant's work related injury. The trial court denied the tortfeasor's Motion to Dismiss the claims for pain and suffering and loss of consortium. On appeal that decision was affirmed. The Court of Appeals said that the employer's subrogation claim against the alleged tortfeasor was the Claimant's cause of action thus the Claimant's pain and suffering claim related back to the date of Employer's filing. Also said that the spouse loss of consortium claim was not time-barred. The employer did not inform the Claimant about its subrogation action until it had filed its action on the last day before the expiration of the applicable statute of limitations. The Court noted that even though the employer was allowed to sue the third-party in its own name the statute made it clear that it is the employee's cause of action that is being asserted. Accordingly, if the employer had remained in the litigation it could have amended its complaint to add a timely claim for claimant's pain and suffering. An amendment to a complaint relates back to the original filing date if it asks for additional damages which arise out of the same transaction or occurrence that is subject to the initial complaint. However, in this case the employer had dismissed its own claim with prejudice and was not in the position to file an amendment asserting additional claims. The Court of Appeals allowed the claimant and his wife as interveners to stand in the shoes of the employer for purposes of amending the relief sought.

HIPAA
THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
HOW IT RELATES TO WORKERS' COMPENSATION
By Kathleen D. Oliver

WHAT IS HIPAA?

Health Insurance Portability and Accountability Act (HIPAA) was presented to Congress as the Kassenbaum-Kennedy Bill (HR3103) and signed into law on August 21, 1996 as PL 104-191. First some basic HIPAA facts:

Specifically, HIPAA calls for:

1. Standardization of electronic patient health, administrative and financial data
2. Unique health identifiers for individuals, employers, health plans and health care providers
3. Security standards protecting the confidentiality and integrity of "individually identifiable health information," past, present or future

HIPAA's Administrative Simplification provision is composed of four parts

1. Electronic Health Transaction Standards
2. Unique Identifiers
3. Security Standards
4. Privacy & Confidentiality Standards

ELECTRONIC HEALTH TRANSACTIONS STANDARDS

The term "Electronic Health Transactions" includes health claims, health plan eligibility, enrollment and disenrollment, payments for care and health plan premiums, claim status, first injury reports, coordination of benefits, and related transactions.

II. UNIQUE IDENTIFIERS FOR PROVIDERS, EMPLOYERS, HEALTH PLANS and PATIENTS

The current system allows medical providers to have multiple ID numbers when dealing with each other, which HIPAA sees as confusing, conducive to error and costly. It is expected that standard identifiers will reduce these problems.

III. SECURITY OF HEALTH INFORMATION STANDARDS

The new Security Standard will provide a uniform level of protection of all health information that is housed or transmitted electronically and that pertains to an individual. The Security standard mandates safeguards for physical storage and maintenance, transmission, and access to individual health information. It applies not only to the transactions adopted under HIPAA, but also to all individual health information that is maintained or transmitted.

IV. PRIVACY AND CONFIDENTIALITY

In general, privacy is about who has the right to access personally identifiable health information. The rule covers all individually identifiable health information in the hands of covered entities, regardless of whether the information is or has been in electronic form.

The Privacy standards:

- limit the non-consensual use and release of private health information; (PHI) give patients new rights to access their medical records and to know who else has accessed them;
- restrict most disclosure of health information to the minimum needed for the intended purpose; establish new criminal and civil sanctions for improper use or disclosure;
- establish new requirements for access to records by researchers and others.

WHO IS AFFECTED?

All healthcare organizations. This includes all health care providers, even one physician offices, health plans, employers, public health authorities, life insurers, clearinghouses, billing agencies, information systems vendors, service organizations, and universities.

WHO ARE COVERED ENTITIES?

Health Plans, Health Care Clearinghouses and Health Care Providers Who Transmit Health Information Electronically.

HOW DOES HIPAA AND ITS REGULATIONS AFFECT WORKERS' COMPENSATION?

Workers' compensation is specifically excluded from HIPAA and it is NOT a covered entity under HIPAA.

Even though workers' compensation is excluded from the HIPAA regulations, the regulation may have an effect on the workers' compensation industry because medical providers may be concerned about releasing medical information. On April 14, 2003 the Privacy and Confidentiality Standards go into effect. A section of the Privacy and Confidentiality Standards authorizes medical providers to only release the Minimum Necessary medical information. Again, workers' compensation is exempt from HIPAA regulations but it is expected that medical providers are going to be leery of releasing more than the Minimum Necessary and, thus, adjusters may have a problem getting the medical information necessary to handle the claims.

Insurance carriers, self-insured employers and third party administrators will need to educate their medical providers that workers' compensation does not fall under the HIPAA Rules and Regulations. For clarification refer them to 45 C.F.R. §160.103. As described in the statute, excepted benefits are one or more (or any combination thereof) of the following policies, plans or programs:

- Coverage only for accident, or disability income insurance, or any combination thereof.
- Coverage issued as a supplement to liability insurance.
- Liability insurance, including general liability insurance and automobile liability insurance.
- Workers' compensation or similar insurance.
- Automobile medical payment insurance.
- Credit-only insurance.
- Coverage for on-site medical clinics
- Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

Two other terms relative to HIPAA that it is important to be aware of are *Business Associates* and *Hybrid Entities*.

A *Business Associate* is a person or company who performs functions or services on behalf of the practice that involves the use of protected health information (PHI). Business Associates are considered covered entities.

The important fact to know about Business Associates is that the term DOES NOT include "other treatment providers and payers" such as workers' compensation carriers.

Companies with both covered and non-covered functions can choose to be a *hybrid entity* For example—a single insurer has health, disability, and workers' compensation products "They must designate the health care components, including: covered functions and functions that would create a business associate relationship with a covered component".

The Workers' Compensation component cannot be considered a "covered component". Covered components cannot share information unless authorized or required by law.

The HIPAA rules and regulations are being phased in over the next couple of years and many of the components will cause confusion amongst the medical community and the insurance industry. Let's all work together to keep each other informed of changes and problems as they occur.

RULE 200(E) ITS HISTORY AND EFFECT

By Ann Baird Bishop

Last year, concern was expressed by some employers and insurers over a perceived inability to require injured workers to return for medical treatment/follow-up in situations where the treating physicians had released the claimants to return only as needed. In response to this perceived problem, a proposal for a statutory amendment was drafted which would have allowed employers/insurers to schedule claimants' appointments with their treating physicians.

This proposal was opposed vigorously by representatives of claimants. A great deal of rhetoric was devoted to expressing reluctance to interfere with the doctor/patient relationship by allowing employer/insurers to schedule appointments for injured workers. Representatives of claimants expressed unwillingness to create any law or rule that took the first step "along a slippery slope where employers/insurers can make appointments for the employee with treating doctors."

Nevertheless, individuals representing claimants did acknowledge that there was a gap in the then current rules which arguably could prevent employers achieving the legitimate goal of requiring claimants, who are off work receiving indemnity benefits, to return to the treating doctors for medical updates. This was the stated problem which the proposed legislative change was designed to correct. However, the proposed legislation appeared to be broader than that which was necessary to deal with the stated problem. Accordingly, it was felt that a rule change could effectively deal with the very narrow problem which seemed to fall outside existing remedies.

Rule 200(e), as amended effective July 1, 2002, was the result of a compromise between the claimants' representatives adamant refusal to agree to any proposal which would allow employer/insurers to schedule appointments for claimants with the treating doctor and the employer/insurers insistence that in a PRN release situation, there was no mechanism in the statute or rules to enable employer/insurers to obtain dated medical information. At present, Rule 200(e) states:

"Following the employee's release by the treating physician(s) to return only as needed and in the event that at least ninety days have elapsed with no authorized treatment, the employer/insurer may request that the employee schedule a return appointment with the treating physician(s). If the employee fails to schedule a return appointment within fifteen days of receipt of written request from the employer/insurer, the employer!

insurer may request an order from the Board directing the employee to schedule an appointment within fifteen days of the order. Unjustifiable failure of the employee to comply with the order may result in imposition of sanctions pursuant to O.C.G.A. § 34-9-200(c)."

This rule does not change or limit the right of employers to require injured workers to cooperate with on-going, active medical treatment. Mechanisms existed in the statute and rules prior to July 1, 2002, which enabled employer/insurers to enforce the claimants' duty to cooperate with medical care which the employer/insurers are required by O.C.G.A. §34-9-200 to provide. For example, where a treating doctor instructs a claimant to return in three months and the claimant fails or refuses to do so, a hearing can be requested seeking to suspend benefits for failure to cooperate with medical treatment and a motion can be filed with the ADR Unit to require the employee to follow the treatment recommendation or prescription of the authorized treating physician. Rule 200(e) deals only with the very narrow situation of an "as needed" release by the doctor which, ipso facto, obviates any allegation of a failure to cooperate sufficient to support a motion or hearing request when the employee simply fails to go back.

By its terms, Rule 200(e) does not abrogate any previously existing method for dealing with medical issues. Instead, Rule 200(e) represents a compromise between the competing interests in allowing doctors and patients to control medical treatment while allowing employers and insurers who are paying for that treatment, a means by which they may stay informed of the current medical status.

THE HISTORY OF WORKERS' COMPENSATION IN GEORGIA

By Mark Gannon

The Workers' Compensation Section of the State Bar of Georgia is publishing a book entitled "A Just and Noble Legacy" compiling the history of the worker's compensation system in Georgia. This Book will be a coffee table quality publication and will not only serve as a valuable reference to worker's compensation practitioners, but will also preserve the legacy of the past for future generations of lawyers who practice worker's compensation.

The Book will begin with a history of the creation of the worker's compensation system in Georgia by statute. There will be a historical overview of how the Georgia worker's compensation system evolved from its western European origin to its creation by statute and evolution in Georgia. The Book will chronicle how a small group of lawyers shaped the application of the law to the administration of the worker's compensation system and how the practice of worker's compensation grew as major changes reshaped the legal landscape.

The Book will document the landmark cases that heavily influenced the Georgia worker's compensation system and the attorneys who handled these cases will take the reader behind the scenes with their unique perspectives on the outcome of these precedent setting cases. The Book will be replete with anecdotal accounts and quotes from the lawyers who rode the worker's compensation circuit throughout the state.

A significant effort is being made to endow the Book with geographic balance. The Book will also chronicle the relationship between the attorneys representing each side and how the animosity prevalent in the early days began to fade as members of the Bar built positive working relationships through recurring encounters in cases.

The role of politics is addressed as the Book recounts how the political interests of labor, management, and insurance have jockeyed for influence to shape the nature and the breadth of our worker's compensation laws.

An entire chapter will be devoted to Kids' Chance and how this wonderful cause has served to bridge the gap between adversaries as we have joined forces to make Kids' Chance the success it is today. Kids' Chance students will be profiled

and their successes chronicled. Finally, the Book considers the future of worker's compensation in Georgia and the challenges that lie ahead. It concludes with the notion that the attorneys who practice worker's compensation must work toward a consensus as to what is in the best interests of Georgia in the fair and effective development of our worker's compensation system.

All profits from the sale of this publication will be donated to Kids' Chance. We expect the book to be completed and ready for sale by our next annual meeting. The cost of the book is being underwritten by the Section, but is significant and could delay its completion. The Executive Committee of the State Bar of Georgia is offering sponsorships for the book as follows:

\$5,000.00	Gold Sponsor
\$2,500.00	Silver Sponsor
\$1,000.00	Bronze Sponsor
\$100.00	Sponsor

All sponsors will be appropriately recognized in the Introduction of the Book. Anyone interested in contributing to this worthy undertaking, can contact me at (404) 521-1282. Anyone interested in becoming a sponsor can submit their check to me or to Thomas Herman, Chair of the Section.

KIDS CHANCE UPDATES

Shaye Crews

2002 has been a meaningful year for Shaye Crews, a remarkable young woman from Woodbine, Georgia. She applied for and received a KIDS' CHANCE educational scholarship. She graduated with highest honors from Camden County High School and she gained acceptance to Valdosta State University for Fall semester. Among the other highlights was the presentation of her KIDS' CHANCE scholarship award by none other than Georgia Supreme Court Justice Robert Benham at the State Bar of Georgia Annual Conference this summer.

Shaye traveled with her parents and friend, Colin Webb, to Amelia Island, Florida, to receive the award at the Workers' Compensation Section luncheon on June 14. Her acceptance speech touched the hearts of all who heard it and brought tears to the eyes of seasoned attorneys.

Shaye spoke these poignant words of gratitude:



Shaye Crews with Justice Robert Benham.

"Recently, I had to face the hard fact that I might not be able to go to college. For a while, I thought all was lost. Then KIDS' CHANCE came along and changed it all. I wish I had some emotional pen to write down just how thankful I am for all of your help. These mere words can't do my feelings justice. You've made my dreams a possibility. I promise you won't be disappointed.

"I believe I have a lot to offer this world. I don't want to be one of those people who were born, breathed and died. I want this life to mean more. I want to make a lasting mark on this world. I understand that 'life is but a vapor.' I will not stand by and watch my life burn away to ash. Thanks to KIDS' CHANCE and its supporters, I won't have to.

"You've given me the match to light an everlasting fire. To all those who have altered and illuminated my life, I am forever grateful. God bless you."

Shaye was 11 years old when her father, in insurance collection/sales representative in Kingsland, was catastrophically injured while exiting a client's home. His accident resulted in a severely torn Achilles tendon, foot fracture, neck and lower back injuries. He is an accomplished musician and a highly articulate lay minister. Shaye's mother, Jeanette, has suffered three strokes. Both parents are disabled.

Shaye is now attending Valdosta State University this Fall on the HOPE scholarship. While that program covers tuition and helps with books, there will be many other expenses that could become insurmountable obstacles. As we have done for so many other young people across the state of

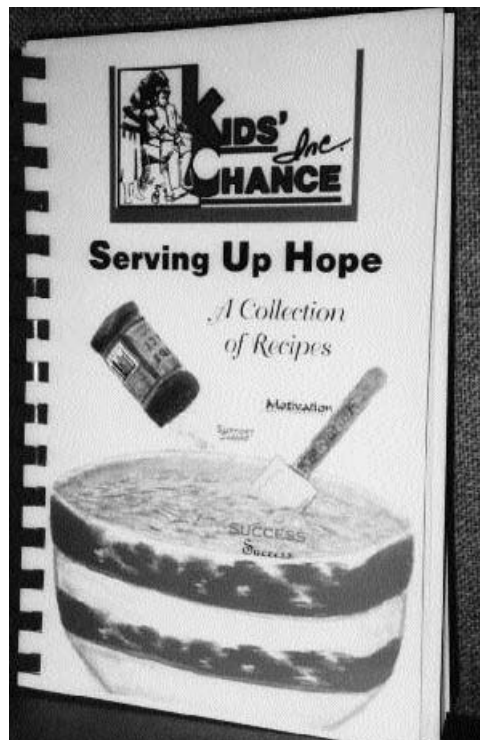
Georgia, KIDS' CHANCE has committed to help Shaye reach her educational goal of earning a degree in journalism/pre-law. We have no doubt that our investment in her will be a sound one. We believe that she will become all she is destined to be and give much back to the world that has presented so many challenges to her and her family.

Georgia's KIDS' CHANCE program began under the direction of founder, Robert M. Clyatt, in conjunction with the Workers' Compensation Section of the Georgia Bar. It has become a model for similar programs initiated in 23 other states throughout the U.S. Funding for scholarships comes mainly through individual and corporate donations, special events and memorial gifts.

Cheryl Oelhafen, executive director, believes the participation of volunteers helps makes KIDS' CHANCE unique. "The children and their families are truly special," she said, "but what makes the program so effective is the commitment of the 12-member board of directors and statewide network of volunteers who receive no monetary compensation. We could not help 'our kids' without their involvement. We are deeply indebted to our volunteers and supporters."

KIDS' CHANCE COOKBOOK SERVES UP GREAT RECIPES AND FUN MEMORIES

Chockfull of wonderful recipes, colorful collages of volunteers and events, summaries and photos of KIDS' CHANCE recipients, this is more than a cookbook!



Now available for \$15, the KIDS' CHANCE cookbook is a must-have for your kitchen and a must-give for holiday sharing. For mail orders we must add \$3 s&h per copy up to three copies; for orders exceeding three books, add only \$2 each s&h.

John Sweet's Tomatoes on page 68 and Wally Speed's G.I. Chicken Tetrizzini on page 160 are just two of the highlights in the unique collection of recipes. Contributors included hundreds of KIDS' CHANCE students & family members, supporters and others associated with the workers' compensation community.

This is an important fundraising effort for our scholarship fund. If you would like to help us sell the cookbooks, please contact the KIDS' CHANCE office at 229-244-0153 or email us at kids@datasys.net.

Kudos to Lesli Seta of Speed & Seta, her committee and work crew, for the stellar job they did of getting the cookbook out of the oven and onto the table!

Sample recipe (yummmmm!)

CRAB BISQUE

Thomas C. Chambers, III, Esq.

6 TBSP. butter	2 ½ cups chicken broth
1 cup green onion, chopped	
¼ tsp. nutmeg	½ cup celery, chopped
1 cup cream	2 TBSP. carrots, chopped
¼ cup white wine or sherry	
6 TBSP. flour	1 pound fresh crab meat
2 ½ cups milk	Salt & pepper
Bacon, cooked, crumbled (optional)	

Melt butter in pan. Add onion, celery & carrots. Cover pan and let vegetables sweat about 5 minutes. Add flour to vegetables, making a paste-like mixture. Gradually add milk, cream & broth (you may need to use a whisk for this). Add seasonings & crabmeat. (Let simmer until meat is cooked.) Add bacon, if desired. Serves 12.

STATE BAR ANNUAL MEETING

At the June 14th Workers' Compensation Section Luncheon during the 2002 State Bar Annual Conference at Amelia Island, KIDS' CHANCE

Chairman Robert M. Clyatt (right in photo) presented a plaque of appreciation to outgoing Workers' Comp Section President Mark Gannon.



Gannon's Atlanta law firm, Savell & Williams, is a long-time supporter of KIDS' CHANCE, through contributions of both financial donations and volunteer help. Members of the firm coordinated and sponsored the agency's first fundraiser, a FUN RUN in 1990. Every year since then, the annual FUN RUN has provided major financial support for the scholarship program. Gregg Porter of Savell & Williams now serves as chair of the FUN RUN; the 2002 event is scheduled for November 2 at Emory Lullwater Park in Atlanta.

Gannon expressed his thanks in these words:

"Thank you on behalf of our entire firm for the special recognition given to Savell & Williams by the Kids' Chance Board of Directors. I think you know very well that Kids' Chance is a labor of love for us at Savell & Williams.

We all must choose how we want to contribute and make a difference in this world and Savell & Williams has embraced the Kids' Chance cause as a means of doing so. To be recognized by Kids' Chance has very special significance for each and every member of the Savell & Williams family."

**2002 JUSTICE FOR ALL
STATE BAR OF GEORGIA CAMPAIGN
FOR GEORGIA LEGAL
SERVICES PROGRAM**

Please remember to support 2002 "And Justice For All" state Bar of Georgia Campaign for Georgia Legal Services Program. Your contributions provide free legal services to Georgians with low incomes in 154 counties - all of Georgia outside the five-county metropolitan area. Free legal assistance often makes the difference in whether a person can obtain housing, food or needed medical treatment. Every dollar you contribute works toward helping clients living at or below 125% of the poverty level.

Give generously and be apart of upholding the basic democratic principle that all people are entitled to equal justice under the law.

Please mail your contribution to:
2002 State Bar of Georgia Campaign for
Georgia Legal Services Program
P.O. Box 78855
Atlanta, GA 30357-2855

**WORKERS' COMPENSATION
MID-YEAR MEETING**
By Luanne Clarke

The Workers' Compensation Section will be gathering as part of the mid-year meeting of the State Bar of Georgia on Friday, January 10, 2003, from 5 to 7 p.m. at the Swissotel, Buckhead, Atlanta. Lisa Wade of Swift, Curry, McGhee & Hiers has again worked with the hotel to ensure that our section's hor devoures and drinks are the envy of all sections of the Bar. In addition to the opportunity to visit with the members of our section, we will have brief oral presentations from Thomas W. Herman, Section Chair, and the Honorable Carolyn C. Hall, Chair, State Board of Workers' Compensation. Attendees will also receive a written update of the recent reported appellate cases.

The State Bar of Georgia will be sending registration forms for the 2003 Mid-Year Meeting in the very near future so please register to participate in our section meeting.

2003 SECTION CALENDAR OF EVENTS

April 25	GSIA	Brasstown Bald, GA (Golf)
April 30	KIDS' CHANCE TENNIS TOURNAMENT	Stone Mtn., GA
June 7	KIDS' CHANCE FAMILY FUN FESTIVAL	Conyers, GA
July TBA	KIDS' CHANCE GOLF TOURNAMENT	TBA
Oct. 2	ICLE SEMINAR/K.C. DINNER & AUCTION	St. Simons Island
Oct. TBA	KIDS' CHANCE FUN RUN	Atlanta, GA





























