NEWS & 440 Report

Fall 2025

Focus On

BEYOND 50 YEARS ...
THE NEXT ERA OF OUR PRACTICE

NEWS & 440 Report

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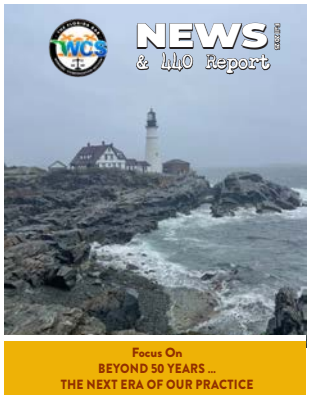


On the Cover

This edition of the *NEWS & 440 Report* turns our focus to the next 50 years of the Workers' Compensation Section and our practice. After a rejuvenating and productive Out-of-State Retreat in Maine, we are looking to the future with great anticipation. We hope you enjoy learning more about the Section's plans as we look beyond 50 years and focus on the next era of our practice.

MESSAGE FROM THE CHAIR

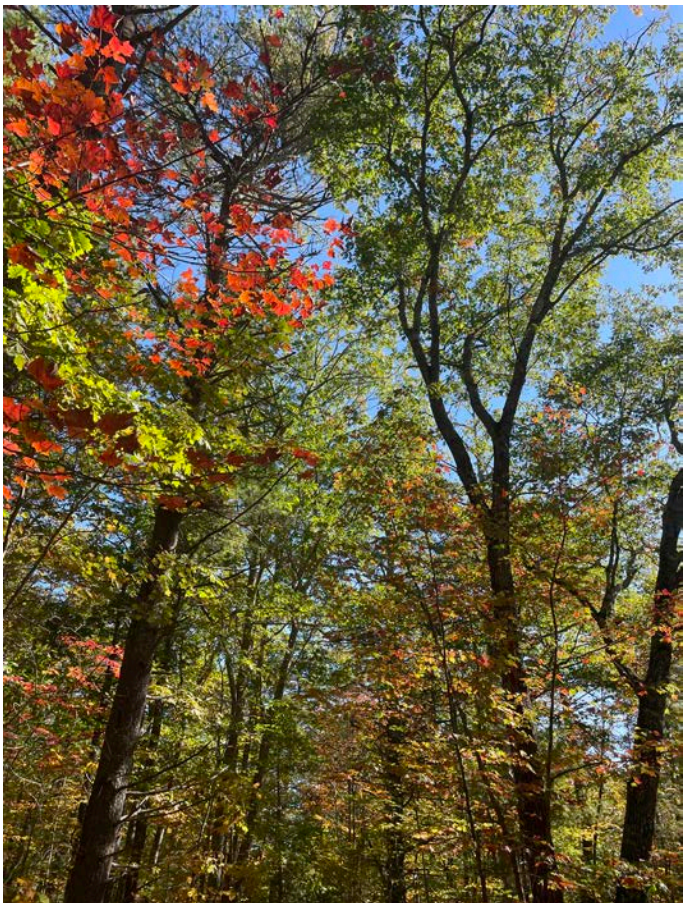
Sean P. McCormack

Find Your Happy Place

On September 27, 2025, as part of our out-of-state retreat to Portland, Maine, a group of us went to visit and tour the Frances Perkins Homestead in Newcastle, about one hour north of Portland. We learned about Frances Perkins's upbringing and her rise to become the first female cabinet member and secretary of labor under Franklin D. Roosevelt's presidency. Designated a federal monument in December 2024, the Frances Perkins Homestead Monument highlights Perkins's dedication to protecting workers and families, and the lasting impact of programs like Social Security, the Civilian Conservation Corps, and the Fair Labor Standards Act. The tour focused on how instrumental she was in bringing workers' rights into focus, a topic close to our law practices. Her homestead, located along Damariscotta River, served as a place of solace for her throughout her life and career where she returned for respite from her work in Washington, D.C. It was a place where she could escape from the stressors of work.

The property includes a walking trail to the Damariscotta River. While learning about Frances Perkins's homestead and walking the trail, it got me thinking that we all need a place to escape. It should be a place to rest and relax, and serve as a break from the stressors of life and our jobs as attorneys, judges, or mediators. With the constant juggling of our high-paced practices with strict deadlines and litigation, it is crucial that we take a break for some rest and relaxation. Whether it is taking a vacation, walking our dog, or cooking our favorite comfort food, we all need an outlet and a break from our careers. It helps us reset and return refreshed and energized. Frances Perkins's refuge was her homestead in a beautiful and remote location along the Damariscotta River in Maine. You should know your refuge when the times get tough and you need a break. That place or activity should bring you joy. Where is your happy place?

Members of the Workers' Compensation Section and their guests tour and pose in front of the Frances Perkins Homestead, also known as the Brick House, a national historic landmark and a national monument for its association with Frances Perkins.



Views of the trail from the Frances Perkins Homestead to Lake Damariscotta. The natural beauty of Maine provided a refreshing backdrop for our out-of-state retreat.

Your leaders in the Workers' Compensation Section have been busy. We have been empowering our members through our section committees. We have officially launched our podcast, which is available for listening on our website, Apple, or Spotify. A big thank you to Ken Hesser for hosting the podcasts. We are moving forward with our new mentorship program. The first event took place in Tallahassee, and more are scheduled in Orlando, Miami, and Jacksonville. The program is six months in duration with each month dedicated to a single subject to include career development, leadership, networking, litigation skills, professionalism, and strengths and weaknesses. Looking to get involved in our mentorship program? Please contact Lisa Thomas at lisa.thomas@doah.state.fl.us.

The JCC town halls have returned and are available for members to attend via Zoom. These serve as an open platform for posing procedural and general questions to our judges and help create an open dialogue between the bar and bench. Our CLE Committee continues to provide monthly audio webcasts. Our Women in Workers' Comp Committee continues to generate new ideas and energy, and we look forward to their contributions to our Section. Our next in-person CLE will take place February 26–March 2, 2026. The Section will be holding a CLE at Sea Cruise aboard Royal Caribbean's Explorer of the Seas departing from Cape Canaveral. Come join us!

My goal for this year is to empower our membership, and I am able to report that we have several new members getting involved in committees and participating in Section activities. Whether it is hosting a CLE, being a guest on our podcast, writing an article, or moderating the JCC town halls, I invite you to do the same. It has been a privilege representing the Section as the chair these past few months. I am available if any members have any input, concerns, or ideas for improving our Section. Please reach out to me at smccormack@thefloridafirm.com. Who knows, maybe getting more involved is part of finding your happy place.

Sincerely,

Sean P. McCormack
Section Chair

MESSAGE FROM THE EDITORS

Kenneth M. Hesser & Matthew J. Troy

After our series of issues over the last year on the past 50 years of the Workers' Compensation Section, we are focusing this issue on the future of our practice and Section. Both of us recently attended the Section's annual out-of-state retreat, this year in Portland, Maine. It was an excellent few days of fellowship with our fellow practitioners and families. We can't emphasize enough that ALL Section members, not just the Executive Council, are welcome and encouraged to attend these events. They are always a whole lot of fun!

In this issue, Megan Oliva Danner, one of our two new board certified attorneys, discusses her process of finally achieving this goal. As your editors are both board certified, we want to address the lack of applicants for board certification. It's a concern right now in our Section, with only two applicants sitting for the 2025 examination. There are many eligible attorneys who we encourage to make the effort to become board certified. Each of us will be happy to discuss the process, both with those who are on the fence about applying and with our younger members who wish to plan ahead to eventually make the commitment!

Thank you to Judge Jonathan Walker who contributed two articles, one on the new OJCC Certified Scholars program and a second on the OJCC's sustainability programs. Brian Bolton provides insight into recent updates to AI that will shape our future practice. Thank you as well to Robert Down, a second-year law student at FAMU Law for his contribution on reducing impairment benefits. Our spotlights this issue are on Anthony Forte and Virna Roa, two attorneys with 15 years of experience who are stepping up to lead the practice on both sides. As always, thank you to Rogers Turner for our case law summary. Finally, we learn a little more about our members' live musical tastes. We hope you enjoy this focus on the future as much as we did and look forward to hearing from you for our next issue.

> "ALONE, we can do so little; TOGETHER, we can do so much."
>
> HELEN KELLER

Come together with your colleagues and join the

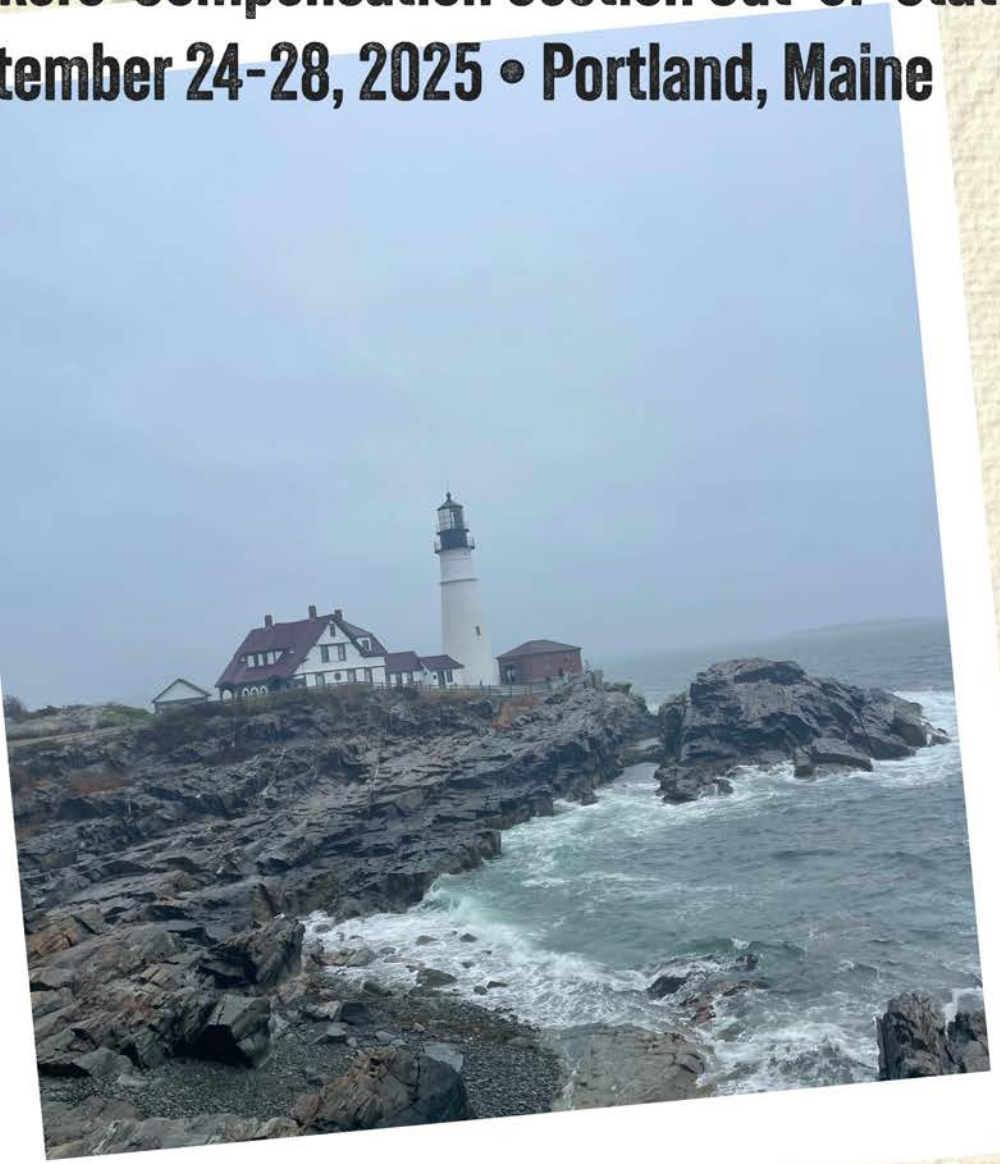
Workers' Compensation Section TODAY!

Visit *www.flabarwcs.org/membership* for more information

SECTION SCENE

Workers' Compensation Section Out-of-State Retreat

September 24-28, 2025 • Portland, Maine



No trip to Maine is complete without a visit to a lighthouse, or two, or a dozen!

The group gets ready to enjoy a waterfront meal together.

SECTION SCENE

WCS Out-of-State Retreat
September 24-28, 2025
Portland, Maine

What's for dinner?
Lobster, of course!

The trolley is a fun way to tour Portland.

Everyone gathers for a group photo. A great time was had by all!

And, yes, we reserved time to conduct the Section's business. If you weren't there, ask one of your colleagues about the sunglasses!

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OJCC Certified Scholars Program Returns for Second Year

By Judge Jonathan Walker

The OJCC Certified Scholars program returned for its second year with an in-person gathering on August 19, 2025, at the WCI Conference in Orlando. The 12 selected Scholars were welcomed by DOAH's Interim Director Darren Schwartz and Deputy Chief Judge David Langham.

Nominated by regional JCC panels throughout the state, the new class represents a cross-section of Florida—including claimant's attorneys, defense attorneys, and industry leaders. The goal of the program is to provide attendees in the seven-year to 10-year experience range a deeper dive into workers' compensation.

The program returns this year because of the overwhelming encouragement from the first class to continue offering the course. Guiding the 2026 Scholars is a planning committee made up of Deputy Chief Judge David Langham, Judge Ralph Humphries, Judge Jonathan Walker, Judge Brian Anthony, mediator Kate Marshman, and Gina Jacobs, Esq. (As an aside, last year's Scholars elected Ms. Jacobs to serve on this year's planning committee for one year to provide her unique perspective as a former participant.) Judge Margret Kerr and mediator AnnaMarie Kim were on the committee for the first year and rotated off to make room for Ms. Marshman and Judge Anthony. The planning committee makes the final selections of Scholars in the spring, secures speakers throughout the year, coordinates the live sessions, and plans for the next year. Planning committee members rotate at intervals to enable new members (and new ideas) to continue to circulate.

The current curriculum includes topics such as workers' compensation history, comparative law, ethics, stress in the practice, engagement, and other subjects geared toward giving the Scholars a wider view of their chosen practice area. This year's speakers come from various backgrounds. The scheduled speakers include Florida judges, out-of-state judges, attorneys, industry professionals, and mental health professionals. Each session is geared toward a single topic with the speakers breaking the larger subject into smaller parts to give greater depth to the curriculum. A brainstorming session occurs at the end of each program to enable participants to discuss with the speakers matters that piqued their interest.

The 2026 Scholars include Holley Akers, Brena Bergman, Natalie Cavallaro, Isidora Eickelmann, Ingrid Hagerty, Joshua Higgins, Elaura Hodgetts, Christine Jermin, Evan Kegler, Mark Lee, Will Ramhofer, and Jesse Rowe.

If you are interested in participating next year, please reach out to a JCC to request further information.

The 2026 Scholars gather for a group photo.

Meet the 2026 Scholars

Holley Akers
O'Rourke and Akers, Jacksonville
Florida Coastal School of Law, 2010

Ms. Akers has been practicing in workers' compensation for over 14 years. She worked for a workers' compensation attorney after high school and so has been in workers' compensation her entire professional career. In her spare time, she is an avid shark tooth collector.

Brena Bergman
Goodman McGuffey, Orlando
University of Florida College of Law, 2020

Ms. Bergman started at the Sarasota, Florida office of Goodman McGuffey LLP in 2015 as a legal assistant while still attending college. She officially joined the Orlando, Florida office of her firm in October 2020 as an associate attorney. As far as her extracurriculars, she served as a mentor for Teen Court to help keep juvenile delinquents out of the criminal system.

Natalie Cavallaro
Morgan & Morgan, Tallahassee
Cooley Law School, 2015

Ms. Cavallaro has been involved in the workers' compensation world since 2009 as a filing clerk paralegal and then as an attorney since 2015. She has represented both employer/carriers and claimants.

Isidora Eickelmann
Work Injury Rights, Coral Springs
Florida International University, College of Law, 2015

Ms. Eickelmann was a defense attorney until about two years ago when she switched to the claimant's side. She is originally from Chile and became an attorney there before moving to Florida. She had her own workers' compensation claim while working as a workers' compensation attorney (severe pain in the shoulders from typing), but did not settle it. Outside of work, she spends most of her time with her two sons (ages 5 & 3) and her husband. She likes to travel and to host friends and family.

Ingrid Hagerty
Moran, Kidd, Lyons, et. al., Miami Lakes
Florida International University, College of Law, 2014

Ms. Hagerty was born in Cuba and learned English through ESOL programs in primary school. She attended law school at FIU and has worked as a defense workers' compensation attorney since September 2014. Her office, home, parents' home, and son's school are all in Miami Lakes. Her personal interests include spending time with family and traveling. Her legal interests include the evolution of the law and the impact AI may have in future years of legal practice.

Joshua Higgins
Cohen Vaughan, Fort Lauderdale
Nova Southeastern University, 2011

Mr. Higgins is very good at Jeopardy because he loves to read and learn about pretty much anything.

Elaura Hodgetts
McConnaughhay Coonrod Pope et. al., Panama City
Barry University School of Law, 2017

Ms. Hodgetts enjoys spending time with her husband Zack, two dogs, and two birds. She is passionate about Lego, baking, video games, and native gardening.

Christine Jermin
Brown & Brown Insurance, Tampa
University of Central Florida, 2006

Ms. Jermin is the daughter of a U.S. Marine, which meant *can't* was a word she was not allowed to use and "mind over matter" wasn't just a phrase, it was a full-blown lifestyle. That mindset has shaped how she approaches challenges and growth, both

personally and professionally. Three years ago when she had her son, she joined an elite club, The Old New Moms Club. It's been a humbling and joyful journey that's given her a new perspective on life, time, and what really matters. She started in workers' compensation 17 years ago as a trainee after college. She believes in investing in the next generation, not just for the good of our industry but also because she'd like to retire one day.

Evan Kegler
Vecchio Carrier Feldman et. al., Lakeland
Stetson University College of Law, 2019

Mr. Kegler began his undergraduate studies in a pre-med major and then decided to pursue law instead. His medical school track fueled his passion for workers' compensation. Through his practice, he has been able to continue his education in all aspects of the medical field.

Mark Lee
Lee Injury Law Firm, Tampa
University of Tulsa College of Law, 2014

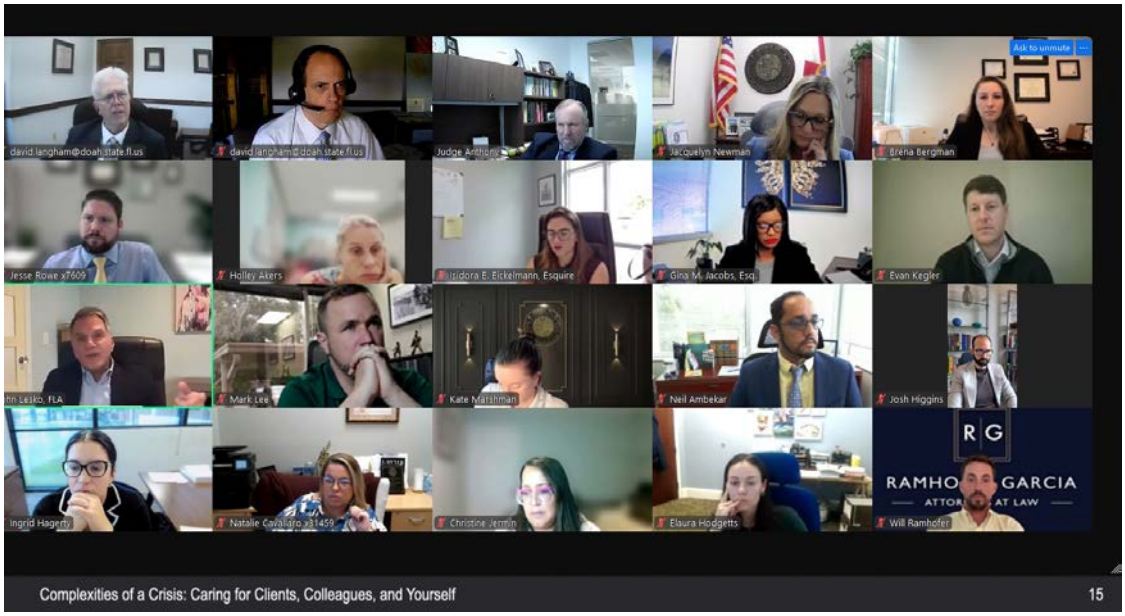
Mr. Lee is a total tech nerd. He built his first website in 1999. (He wishes he would have kept pictures of it because it was horrible.) He has built many since. He has always kept up, as best one can, with the tech world and really enjoys discussing/brainstorming how tech intersects with the practice of law. He spends his free time hanging out with his family/kids, and he enjoys watching movies at the theater and going to standup comedy shows.

Willie Ramhofer
Ramhofer Garcia, Hollywood
Florida International University, College of Law, 2013

Mr. Ramhofer says in his free time, he enjoys golf and surfing, but he is terrible at both!

Jesse Rowe
Morgan & Morgan, Orlando
Florida A&M University, College of Law, 2014

Mr. Rowe started as a workers' compensation paralegal in 2007 on the claimant's side. He then attended FAMU in the evenings while working full time. His classmates included Neal Ambekar and Sean Callahan. Thus, he has seven years' workers' compensation paralegal experience and 11 years' workers' compensation attorney experience. He sometimes says he is just a paralegal with a legal degree.



The 2026 Scholars meet via Zoom.

Focus: BEYOND 50 YEARS ... THE NEXT ERA OF OUR PRACTICE

The Workers' Compensation Section of The Florida Bar strongly encourages attorneys practicing in this field to consider becoming board certified in workers' compensation. Here we introduce a new feature where we hear from our newest board certified attorneys. Congratulations to Megan Oliva Danner on her accomplishment.

Meet New Board Certified Attorney

Megan Oliva Danner

Bichler & Longo, PLLC

I knew early in my career that board certification was a goal I wanted to pursue because it stands as the highest mark of professionalism and expertise in our field. Immediately after completing my first trial, I created a document titled "Board Certification Checklist." Every time I had a trial, appeal, or other qualifying event, I updated the list with the intention of submitting my application at the earliest opportunity. In fact, I completed my final trial and submitted my application within days of the 2024 filing deadline.

I was thrilled when I learned I had been approved to sit for the board certification exam. The process of preparing was both rigorous and rewarding. It required long hours of studying, reviewing case law, and balancing preparation with the demands of my practice and personal life. I spent countless evenings on the couch with my husband—who isn't a lawyer—quizzing me with my Chapter 440 flashcards, until he practically knew the material himself. The exam itself was every bit as difficult as I had anticipated, but the moment I learned I had passed was one of the most rewarding experiences of my career.

Becoming board certified has been deeply meaningful to me. It symbolizes not only a professional accomplishment but also a personal milestone in a career dedicated to helping others through some of their most difficult times. It has given me confidence, credibility, and a renewed sense of purpose in the work I do.

For anyone considering pursuing board certification, my advice is this: start studying early and give yourself plenty of time—breaking the material into manageable pieces makes the process less overwhelming. And don't be afraid to lean on your support system—whether it's family, colleagues, or even a very patient spouse with your flashcards. The journey is demanding, but the reward—both personally and professionally—is more than worth it.

Artificial Intelligence Bites Lawyers

by Brian Bolton

Recently a friend wanted me to go on a day trip on our Sea-Doo jet skis up the St. John's River to a particular lake in North Florida. He said that per his online "research," the lake was good for swimming and there was a beach at the lake. I wanted to know more about the lake, so I entered the search phrase, "can you swim at the lake." An AI-generated response was, "Yes, the lake is good for swimming and there is a beach from which to do so." So, I accessed my Garmin satellite map to see where the beach was located exactly. There was none. I then looked at information from an official parks source and found not only was there no beach at the lake, but it was unsafe to swim because of a large population of alligators. Yikes! AI could have gotten us bitten, literally. The AI function seemingly "wanted" to answer our lake swimming question in a positive manner and give us a pleasing response, which could have put our lives at risk.[1]

The Spring 2024 edition of the *NEWS & 440 Report* offered an excellent overview of the use of AI in the workers' compensation practice. This is a follow-up on the hazards of using AI.

Generative artificial intelligence (GenAI) in particular brings growing risks when used in the legal field. Most of us know that GenAI is a form of artificial intelligence that has the capability of creating content including but not limited to documents, images, videos, audio, etc. That is why the AI industry is investing hundreds of billions of dollars into AI, creating massive AI centers across the U.S., which by some estimates will account for up to 20% of the national power consumption by 2030.[2]

AI starts by using algorithms, many patterned after human neurons, to predict desired content using human interaction to generate new content and learn patterns and structures of an individual's thinking.[3] As a research tool, AI allows a lawyer to find source information efficiently so it can be analyzed by the lawyer. It is content creation and content enhancement that are of concern because AI platforms can erroneously create legal analysis, opinions, and case law.[4] This is not necessarily problematic in the art fields where music, dialogue, abstractions, and even humor, jokes, and riddles are the subject.[5] However, it can be problematic in the legal field where faulty abstractions of case law, for example, are not only unwanted but can cause ethical issues when case law is misrepresented due to AI's creative and artistic bent.[6] This is also a concern in the medical field where, for example, AI's use in colonoscopies is associated with a rise in colon cancer connected with the technology's failure to identify cancerous lesions.[7]

In *Wadsworth v. Walmart,* U.S. Federal District Judge Kelly Rankin, District of Wyoming, sanctioned lawyers and associate counsel $5,000 because they cited illegitimate cases in a pleading created by an in-house AI program called MX2Law.[8] Essentially, AI "hallucinated" the cases, creating citations that did not exist. In that instance, the lawyers cited nine cases of which the judge could locate only one. The AI platform also seemed to change the legal standard applied to the matter. AI did its "job" of exploiting imagination and not following general rules.[9] In other words, it appears that AI thought "outside of the box" for the lawyers.[10]

In another case, Federal District Court Judge Alison Bachus in Arizona sanctioned an attorney in *Mavy v. Commissioner of Social Security Administration* for filing a court document that contained errors created by AI.[11] The court said that "well over the majority of the citations provided to this Court in plaintiff's opening brief are fabricated, misleading or unsupported."[12] The judge raised the issue on July 22, 2025, when she questioned the lawyer on court cases that did not exist in the District of Arizona.

In all U.S. court jurisdictions, lawyers are responsible for the content of any document they file with the court.[13] See, for example, section 440.32(3), Fla. Stat., (2025)(Florida Workers' Compensation Law

concerning pleadings, motions, and other papers signed by attorneys).[14] Someday, the precedents that AI conjured up may come to human fruition validating the AI "hallucination." Maybe the AI precedents and rules are better for the law and society, but that's another subject altogether. For now, AI's legal hallucinations, if used by a lawyer, intentionally or not, will likely get them sanctioned.

Some in the legal field propose that GenAI can streamline the legal process insofar as it is capable of quickly and accurately analyzing data; drafting contracts, legal memorandums, and responses to requests for information; and conducting technology assisted information review (TAR), etc.[15] They see AI as a panacea leading toward efficiency and a reduction in monotony and frustration in the context of the new age of large data sources and court demands. Indeed, they may view lawyers as a secondary necessity such that a lawyer's time and expense can be reduced by intense use of AI-generated legal information.

Others hold that such a perspective is what led to the incidents cited above. The sanctioned lawyers relied on AI; however, "oops" and "mistake" are not defenses for lawyers or clients who rely on faulty AI-generated legal material submitted to courts. Under state and federal rules, attorneys are responsible for the entire content of their writings when they sign a particular document or pleading.[16] Accordingly, the courts will say if you, the lawyer, signed the document containing erroneous AI information, you own it.

Some common sense will help you avoid getting bitten by AI. For example, do not trust legal opinions, analyses, case citations, and interpretations generated by AI. This is particularly important for newer lawyers who may tend to rely on AI but do not fully understand Florida workers' compensation law. They need to know that AI in the legal setting should be used as a starting point for research and to cite check/source check AI-generated material.

Many also don't realize that AI sometimes tends to try and "please" the individual seeking information, like it did telling my friend and me that it was safe to swim from a beach in a gator-infested lake. So, use common sense, and don't get bitten by AI.

***Brian Bolton, Esq., B.C.S.**, is a partner in the firm of Bolton, Helm & Augustine, LLP. He is Florida Bar board certified in workers' compensation law and has been practicing for 40 years in the field. Edited by Brian Hanley, Esq., with the firm.*

Endnotes

[1] *See* Jargon and Kessler, A Chatbot Fueled Delusions, Ending in *Murder-Suicide*,Wall Street Journal, A1 (Aug. 30-31, 2025) (ChatGPT befriended a mentally ill tech company worker, reassured him he was sane and promoted his paranoia into a murder-suicide); Duffy, *Parents of 16-year-old Sue OpenAI, Claiming ChatGPT Advised on His Suicide*, CNN Online (Aug. 27, 2025) (AI allegedly helped teenager commit suicide encouraging and advising on methods, even offering to write first draft of suicide note), https://www.cnn.com/2025/08/26/tech/openai-chatgpt-teen-suicide-lawsuit.

[2] Kay Rubacek, *Billions of Dollars for AI, But No Clue About Ourselves*, Epoch Times, A16 (Aug. 13–19, 2025), https://www.theepochtimes.com/opinion/billions-for-ai-but-no-clue-about-ourselves-5891817.

[3] *See*, Nantheera Anantrasirichai & David Bull, *Artificial Intelligence in the Creative Industries: A Review*, 55 Artificial Intelligence Review, 590–592 (2022), https://link.springer.com/content/pdf/10.1007/s10462-021-10039-7.pdf.

[4] *See Wadsworth v. Walmart, infra* note 7.

[5] *See generally*, Margaret Boden, *Creativity and Artificial Intelligence*, 103 Artificial Intelligence, 347–356 (1998).

[6] *See*, Debra Weiss, *No. 42 Law Firm by Head Count Sanctioned Over Fake Case Citations Generated by AI*, ABA Journal Daily News (Feb. 10, 2025), https://www.abajournal.com/news/article/no-42-law-firm-by-headcount-could-face-sanctions-over-fake-case-citations-generated-by-chatgpt.

[7] *See* Krzysztof Budzyń, et al., *Endoscopist Deskilling Risk After Exposure to Artificial Intelligence in Colonoscopy: A Multicentre*, Observational Study, The Lancet Gastroenterology & Hepatology, https://doi.org/10.1016/S2468-1253(25)00133-5 (Aug. 12, 2025).

[8] *Id*.; Johnathan Easton, *US Judge Revokes Lawyer's Admission in Walmart Case over AI-generated Fake Cases*, National Technology News, https://nationaltechnology.co.uk/US_Judge_Revokes_Lawyers_Admission_Over_AI_Generated_Fake_Cases.php (Feb. 26, 2025).; *Wadsworth*, Case No. 2:23-CV-118-KHR (Feb. 24, 2025).

[9] Nantheera Anantrasirichai & David Bull, *Artificial Intelligence in the Creative Industries: A Review*, 55 Artificial Intelligence Review, 590 (July 2, 2021).

[10] *Id*.

[11] *See*, Annette Cary, *Tri-Cities Attorney Sanctioned Over Suspected AI "Hallucinations" in Court Filing*, Tri-City Herald (Aug. 20, 2025); *Mavy v. Comm'r of SSA*, No. CV-25-00689-PHX-KML (ASB) 2025 LX 361996 (D. Ariz. Aug. 14, 2025).

[12] *Id*.

[13] *Id*.; *see Wadsworth, supra* note 7.

[14] *See also Mavy, supra* note 10, p.5, citing to Fed. R. Civ. P. 11(b).

[15] *See*, Avaneesh Marwaha, *7 Ways Artificial Intelligence Can Benefit Your Law Firm*, ABA News and Insights (Sept. 2017), https://www.americanbar.org/news/abanews/publications/youraba/2017/september-2017/7-ways-artificial-intelligence-can-benefit-your-law-firm/.

[16] *Wadsworth, supra* note 7.

Reducing Impairment Benefits in the Setting of Voluntarily Reduced Earnings

by Robert Down, Jr.

Recently, an insurance client asked an interesting question about the payment of impairment income benefits (IBs). In the case at issue, the authorized treating doctors opined that the claimant had reached maximum medical improvement (MMI) with a 5% permanent impairment rating and that the claimant could perform full-time, light-duty work. Further, the employer was willing to offer such work, and if the claimant had accepted the offered work, she would have earned income equal to or in excess of her average weekly wage (AWW) during each week in which she was entitled to an IBs payment. Instead, however, the claimant chose to work fewer hours than she was capable of working, according to the authorized treating physicians, and she thus earned less than her AWW during the weeks she was entitled to IBs payments. The client wanted to know if IBs payments could be reduced due to the claimant's voluntary limitation of income. The client contended, from a *fairness* standpoint, that it did not seem right that a claimant could voluntarily reduce their income by even a nominal amount and thereby receive a higher payment of impairment benefits, arguably receiving an unjust enrichment. The following is a brief discussion of the law regarding this thought-provoking question.

When an employee has an earned income equal to or greater than their AWW, the IBs payouts can be reduced to a rate of 50% of 75% of the temporary total disability (TTD) rate (37.5% of the TTD rate). The payment of IBs is controlled by section 440.15(3)(c) (2024), Fla. Stat., which states:

> [...] Impairment income benefits are paid biweekly at the rate of 75 percent of the employee's average weekly temporary total disability benefit not to exceed the maximum weekly benefit under s. 440.12; provided, however, that such benefits shall be reduced by 50 percent for each week in which the employee has earned income equal to or in excess of the employee's average weekly wage. [...]

Florida's First District Court of Appeal has held that when construing a statute, if the language is clear and unambiguous, deference is given to the statute as written. *Gray v. Publix Supermarkets, Inc.*, 999 So. 2d 691, 692 (Fla. Dist. Ct. App. 2008). See *Mayo Clinic Jacksonville v. Dep't of Prof'l Regulation, Bd. of Medicine*, 625 So. 2d 918 (Fla. Dist. Ct. App. 1993); *Smith v. Crawford*, 645 So. 2d 513 (Fla. Dist. Ct. App. 1994) (quoting *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973) (noting ["e]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity."). This suggests the court will acquiesce to the legislature and its particular choices when drafting the statute so long as the language is both clear and unambiguous. Therefore, if the court concludes that the controlling law is both clear and unambiguous, it will end its analysis and defer to the statute as written.

Section 440.15(3)(c) seems to be both clear and unambiguous. In *Seminole Cty. Gov't v. Baumgardner*, 28 So. 3d 145, 146–47 (Fla. Dist. Ct. App. 2010), the court agreed with the judge of compensation claims (JCC) that section 440.15(3)(c) is clear and unambiguous. In *Baumgardner*, the claimant was entitled to permanent impairment benefits. *Id.* On occasion, the employee failed to earn 100% of the AWW for reasons unrelated to the compensable injury, and as such, the carrier attempted to pay the reduced rate of 37.5% of the TTD rate for the period of reduced earnings. *Id.* The employee filed a petition for benefits (PFB), and the JCC ruled that the carrier must pay the full rate of 75% of TTD despite the lack of a causal link between the failure to earn 100% of the AWW and the compensable injury. *Id.* The carrier appealed, and the First DCA held the appellant's position would require the court to read words into the statute that were not included by the legislature and accordingly they affirmed the JCC's position. *Id.* The court's ruling clarified that section 440.15(3)(c) is both clear and unambiguous and

that no causal link must exist between the reduced income and the compensable injury.

Applying *Baumgardner* to the discussion at hand suggests the JCC would find against a carrier that reduced IBs payouts to a rate of 37.5% of the TTD rate for the period of time in which the employee voluntarily failed to earn 100% of their AWW. This decision would be relatively straightforward as *Baumgardner* established controlling case law on the clear and unambiguous nature of section 440.15(3)(c). *Baumgardner*, 28 So. 3d at 147. Further, it established that the claimant's reduced earned income need not be causally related to the compensable injury in order to impact the rate of impairment benefits, thus negating a potential major contributing cause argument. *Id.* at 146. *Baumgardner*, when combined with *Gray,* creates a strong likelihood that the court will not read past the plain language of the statute. *Id.* at 147; *Gray*, 999 So. 2d at 692.

Other case law is tangentially persuasive on the issue. For example, a carrier may not consider a claimant's use of accrued sick or vacation leave to determine earned income for the purpose of reducing IBs payments. In *Eckert v. Pinellas Cnty. Sheriff's Off.*, 215 So. 3d 161, 162 (Fla. Dist. Ct. App. 2017), the claimant appealed a decision by the JCC whereby the carrier was allowed to use sick/vacation leave time drawn during the week in question for the earned income calculations. In *Eckert*, the employee's earned income with the drawn leave was equal to or in excess of their AWW. *Id.* at 162. As a result, the carrier paid the reduced rate of 37.5% of TTD. *Id.* However, on appeal, the court reversed, concluding that used leave was not earned during the week in question; instead, it was earned and vested previously and simply drawn upon during the week in question. *Id.* Therefore, the value of previously earned leave time cannot be included in the calculation of earnings for the week in which it is drawn upon.

The court has also held that a claimant who voluntarily limited their income is still entitled to impairment benefits. In *Moore v. Hillsborough Cty. Sch. Bd.*, 832 So. 2d 134 (Fla. Dist. Ct. App. 2002), the claimant voluntarily limited their income, failed to seek employment commensurate with their abilities to work, and sought IBs from the compensable industrial accident. The JCC ruled that the claimant was not entitled to IBs as they voluntarily limited their income. *Id.* However, the First DCA reversed, finding that voluntary limitation of income does not bar entitlement to IBs under section 440.15(3)(a). *Id.* Accordingly, even if a claimant voluntarily reduces their income below 100% of their AWW, a carrier must still pay IBs at the full rate of 75% of TTD.

Therefore, it appears that a carrier that reduces IBs payment to a rate of 37.5% of TTD for a claimant who voluntarily reduces their income below 100% of their AWW is likely to be ordered to pay the full rate of 75% of TTD. The court held in *Gray* that it will defer to the language of the statute if it is determined to be clear and unambiguous. 999 So. 2d at 691. Section 440.15(3)(c) clearly and unambiguously states that benefits may only be reduced when the employee has earned income equal to or in excess of the employee's AWW. *Baumgardner,* 28 So. 3d at 145. *Baumgardner* and *Moore* both held the limitation of potential earned income on the part of the claimant will not bar the claimant from impairment income benefits at the full rate. *Baumgardner*, 28 So. 3d at 145; *Moore*, 832 So. 2d at 134. Further, drawn leave that increases a claimant's weekly income cannot be used as earned income when determining which IBs rate to use for payouts. *Eckert*, 215 So. 3d at 161.

Notwithstanding the discussion above, the insurance client made a good point that a claimant's self-reduction of wages for the purpose of receiving a higher impairment benefit payout seemed unfair. Indeed, the purpose of the workers' compensation statute is to return the claimant to work as quickly as possible with earning commensurate with their actual restrictions. *See* section 440.015. Public policy would then favor, it would seem, a reduction in benefits for the voluntary limitation of income as discussed above. The current statutory scheme does not appear to align with the intent of the workers' compensation law as described in section 440.015. Arguably, an amendment to the statute is therefore in order. That amendment could take the form of: "[…] however, that such benefits shall be reduced by 50 percent for each week in which the employee has earned income equal to or in excess of the employee's average weekly wage or voluntarily limits their income to less than their average weekly wage." This change would promote the public policy of fairness.

***Robert Down, Jr.**, graduated from Adventist University of Health Sciences with a B.S. in nursing. He earned an M.B.A. from Stetson University and a Master of Healthcare Administration from AdventHealth University. He is a second-year law student at Florida A & M University College of Law in Orlando. Mr. Down wrote this article while clerking for Bolton, Helm and Augustine, LLP. This article was edited by Brian Hanley, Esq., for the firm.*

JUDGE'S CORNER

Judicial Outreach in Florida: Efforts to Retain (and Sustain) Workers' Compensation Attorneys in Their Practices

By Judge Jonathan Walker

The genesis of this article began with my reading of another article entitled "Bar's 75th Anniversary Spurs Career Sustainability Initiative" in the May 21, 2025, edition of *Florida Bar News*. The writer discusses efforts by Florida Bar President Rosalyn Sia Baker-Barnes to stem the outflow of attorneys from their practice areas throughout the state. To this end, President Baker-Barnes empaneled a special committee to address the issue of sustainability for attorneys in their practices. Various studies spurred her decision. According to Co-Chair G. C. Murray II, Esq., the 2024 Membership Survey showed that 80% of Florida lawyers under 35 believed the legal profession was "becoming less desirable." Co-Chair Murray referenced a 2021 Thomson Reuters report that showed a 16% attrition rate at the 100 largest U.S. law firms. Using this figure, the report "calculated that for every 20 lawyers hired, 15 would leave within six years."

In light of the article, we reviewed the practices of the Florida Office of the Judges of Compensation Claims (OJCC). This review revealed that our agency has already embarked on numerous programs to encourage both attorneys and their staffers to continue practicing workers' compensation throughout their careers. Of course, as in other practice areas, workers' compensation firms in Florida face retention challenges as highlighted in the insightful article. But with the advent of these programs, our office—in partnership with other stakeholders—works very hard to stem the tide of early departures.

We agree with the article's premise that busy practices often inhibit the ability of an attorney to *slow down* and see the 10,000-foot view of what they are doing every day. Without an opportunity to sometimes see a broader picture, the tendency is to become mired in the trees and not see the entire forest. Through program offerings throughout the state, the OJCC and our partners strive to provide opportunities for workers' compensation lawyers and staff to come together and hear from diverse speakers. Our recent panelists have included appellate judges, compensation claims judges, administrative law judges, experienced lawyers, and industry executives—all of whom brought their unique perspectives on what it is to work in workers' compensation.

Some of the CLE or CE approved courses we have developed include:

- *OJCC Certified Scholars Program.* Begun last year, this intensive nine-month program gives attorneys and industry professionals a deeper dive into workers' compensation. Geared toward those in the seven-year to 10-year experience range, participants are nominated by regional JCC panels. A selection committee reviews the nominees and selects 10 to 12 individuals who have shown exceptional qualities thus far in their careers.

- *OJCC Academy*. In this interactive program, newer lawyers with less than seven years' experience learn how to try a workers' compensation case before a JCC. Classes are taught by OJCC judges and experienced trial attorneys in small groups of fewer than 10 attorneys.

- *Workers' Compensation Winter Seminar.* Sponsored by the OJCC and the Workers' Compensation Institute, this annual, free, day-long program (held at the First District Court of Appeal in Tallahassee) brings together attorneys, adjusters, and employers to learn about changes in workers' compensation in the past year. A panel of First District Court of Appeal judges also give their particular insights into workers' compensation based on their exclusive appellate jurisdiction over our practice area.

- *Paralegal Masterclass.* JCCs and experienced attorneys bring their particular skills to a curriculum designed for the workers' compensation paralegal. The program emphasizes the Florida Rules of Workers' Compensation Procedure and the effect of the rules on every aspect of an active law practice. The instructors also discuss ethics, professionalism, and the unlicensed practice of law with the attendees.

Our judges and mediators have leadership positions in five dedicated workers' compensation Inns of Court located in Jacksonville, Orlando, Tampa, Miami, and Port St. Lucie. While such formats are uncommon, we find that dedicated Inns provide another conduit for workers' compensation attorneys in these locales to meet one another and learn from the various teams about issues affecting our particular practice. These meetings promote in-person engagement.

We are not alone in our efforts. The Workers' Compensation Section of The Florida Bar coordinates a multi-day instructional

Forum in Orlando annually, which brings together many members of our community to learn about their chosen profession. The Section convenes Zoom sessions with the JCCs that enable lawyers to tune in to learn about recent developments in the law. The Section also coordinates a successful trial advocacy program taught by experienced lawyers that provides instruction to attorneys.

Of course, each August in Orlando, the Workers' Compensation Institute (WCI) assembles the largest conference of its kind in the country, and it is unparalleled in its scope and reach. WCI has also established a Workers' Compensation Hall of Fame recognizing community leaders, historical perspectives, and this practice.

Together with our partners, the OJCC continues to work on sustaining our workers' compensation attorneys in our special area of Florida law. But we know there is more work to be done. For this reason, our judges are continuing to explore new opportunities for the bench and bar to come together as a community to learn from one another. Through this shared learning, our attorneys will begin to see the bigger picture of what it is they do every day. In this way, we hope that an awareness of the greater workers' compensation industry—and the part they play in it—will encourage our lawyers in their daily work and future careers.

If you would like to learn more about the OJCC's sustainability programs in the state, please reach out to us.

Judge Jonathan E. Walker *was admitted to The Florida Bar in 1997 following graduation from Samford University's Cumberland School of Law. He was initially appointed judge of compensation claims for the former Panama City Beach District in October 2016, and later transferred, in 2020, to the Pensacola District. In February 2022, Governor Ron DeSantis reappointed Judge Walker to another four-year term. Following admission to the Bar, Judge Walker was an assistant state attorney for several years. Thereafter, he worked as an assistant county attorney in Walton County, Florida. For 16 years, Judge Walker practiced with the statewide law firm of Conroy, Simberg. He was the managing partner of the Pensacola office of that firm immediately before his appointment. During his time with Conroy, Simberg, Judge Walker practiced exclusively in workers' compensation defense and lectured throughout Florida on various workers' compensation issues. He is rated AV Preeminent by Martindale- Hubbell and has spoken at multiple seminars throughout Florida as a judge of compensation claims. Judge Walker serves as a member of the OJCC Certified Scholars Planning Committee and as a member of the OJCC/WCI Tallahassee Winter Seminar Program Committee. He is also a team leader with the C. Roger Vinson American Inns of Court (Pensacola chapter).*

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ATTORNEY SPOTLIGHT

Anthony Forte

The Gallagher Law Group
Fort Lauderdale, Florida

Who is someone who inspires you and why?

My grandfather, based upon his accomplishments during World War II as an air force bomber. I learned about this much later in life because he, like many men of his generation, didn't speak much about the war. I was able to read articles about him after my grandmother recently passed away.

Why do you practice workers' compensation law?

Workers' compensation is a very direct area of law. I like working with clients in an ongoing legal matter where benefits are constantly being obtained. You get to know your clients very well. It's not just all litigation. It's fluid.

Proudest accomplishment within the Section?

My proudest accomplishment was litigating a denied case against Buy Buy Baby that involved a head injury. The doctor testified live during trial and flipped in my client's favor, resulting in compensability. The claimant was pulling on furniture, fell backward and suffered a brain fluid leak. Pretty bad head injury. The result at trial was the right one.

Favorite workers' compensation law case?

My favorite case is *Leon v. CSB Services, Inc.*, 219 So.3d 166 (Fla. 1st DCA 2017). The case stands for the proposition that the employer/carrier can't assert a defense at trial that they didn't assert previously.

What is something few people know about you?

I like long distance bike riding. I used to ride from the old Parrot Jungle to Crandon Park in high school. Now, I do it with my 10-year-old son.

Favorite quote?

"What we have here is a failure to communicate." My dad used to say it when I was a kid. It's from *Cool Hand Luke*, a great Paul Newman movie.

Favorite song lyric?

Metallica: "Master of puppets, I'm pulling your strings."

Best place you have traveled and what makes it special?

A recent trip to Atlanta because my kids were finally old enough to enjoy all the things the city has to offer.

If you could have lunch with anyone from history, who would it be and why?

I would have lunch with Franklin Roosevelt and see what his thoughts were as far as how he would have ended World War II. I know how Truman ended it, but would Roosevelt have done the same?

DEFYING UNIFORMITY: Spotlight on Diverse Leaders in the Workers' Compensation Legal Community

Virna Roa, Esq.

Martinez Roman, P.A.

City where you practice?

The office is located in Miami Lakes, but we practice statewide.

Where did you grow up?

North Miami, Florida. I was born in Los Angeles and moved here when I was 10.

Where did you go to undergraduate? Major? Law School?

Undergraduate at Tufts University, studying international relations and history. Law school at University of Miami.

What made you decide to be an attorney?

That's a hard question. I have wanted to be an attorney since I was a teenager. I wanted to help people in some way and thought I could do that by being an attorney. I can handle all the reading and writing that some people don't want to deal with. I enjoy the advisory component of my career, and you do want somebody like me on this side so that claimants get what is due and owing.

If you could go back in time, what would you tell yourself in your first year of practice?

Do things for your career outside of working in the office. I was so young and naïve the first years I was working. All I did was work, and I didn't worry about networking or mentoring. I didn't seek further education. I just worked.

How long have you been practicing workers' compensation?

Thirteen years in workers' compensation. Very briefly, my first job was bankruptcy and foreclosure defense because when I graduated, the economy was bad and those were the jobs that were hiring.

Do you practice for the claimant or the defense in workers' compensation? Have you ever practiced for the other side?

I did claimants' work from 2012 to 2018. And now I do defense. It's definitely a lot more writing. Reporting. Other than that, it's the same analysis, using the same analytical skills. This side is more investigatory, and that makes it more fun.

What do you like best about practicing workers' compensation?

As cheesy as it may sound, I like working within this community. I have heard crazy horror stories regarding regular civil litigation and commercial litigation. I appreciate the tight-knit community and the respectful nature of this community.

If you could change three things in Florida workers' compensation, what would they be?

I can't think of three things, but I would definitely like for the medical providers that are part of this system to be more educated about the law. Sometimes I get the opportunity to do this very graciously. Other times, we are forced to work with situations that could have benefitted from better information

What accomplishment(s) in your career are you most proud of?

My answer is something intangible. I am truly proud of practicing with ethics. This is something that allows me to be at peace and is invaluable to me.

What three accomplishments in life are you most proud of?

(1) Raising my son, which is still ongoing. He's 11 years old. (2) Being an attorney is actually a great accomplishment to me, believe or not, because it's a great testament of saying you're

going to do something and actually doing it. I think people take that for granted. (3) Always staying true to my personal beliefs and values.

Do you think pineapple belongs on pizza?

I do. I do. I like pineapple on pizza. Especially if it's thin crust.

Would you rather speak all languages or speak to animals?

Speak all languages. Because I think communication is the cause of a lot of problems between humans. If we can communicate with each other, it will help us get along better. Especially language can be very cultural. I speak three languages: English, Spanish, and French.

Which food makes you gag?

I love food. I don't like organs like liver. It's a textural thing.

Who would you choose to narrate your life?

Mariah Carey. In both song and speaking.

In one word, describe how you feel when you watch the sunset?

Grateful.

What would be the title of your Netflix documentary?

Just "V."

What is something that has sparked joy for you in the past year?

I went on my first cruise this year, and I got some of the best sleep ever. Thankfully, I only had one "work-related" dream.

What life hack is now an unconscious standard practice in your everyday life?

It has to be movement and exercise. I go to the gym and do HIIT class or lift weights. Outside, I like to walk and run. I have run races in the past when I had more time. I took up running in the pandemic since we couldn't go to the gym. It was a great way to get out of the house. I learned. I never thought I would like it. I was never an athletic child. In high school, I was told I had to play a sport, so I chose swimming because I didn't want to do any running!

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440 Q&A

What LIVE MUSICAL ACT have you seen the MOST TIMES?

Third Eye Blind (12 times), Rush, and AC/DC (seven times, starting in 1979 with Bon Scott as lead singer)
Bill Rogner, Winter Park

Ed Sheeran (at least eight times, including in Philly, Chicago, Atlanta, Tampa, and Orlando)
Ken Hesser, Gainesville

Elton John (Biloxi, Pensacola, Las Vegas)
Tracey Hyde, Pensacola

Duran Duran
Dawn Traverso, Miami

Billy Joel
Richard Manno, Orlando

Bowling for Soup (three times at House of Blues)
Neil Ambekar, Orlando

Better Than Ezra
Kim Syfrett, Panama City

Rolling Stones (two times)
Rogers Turner, Winter Park

Billy Joel (20+ times)
Karen Gilmartin, Miami

Jimmy Buffet
Billy Weiland, Orlando

Andrea Bocelli (four times)
Manny Franco, Tampa

Case Law Update

by W. Rogers Turner, Jr.

***Murphy v. Polk County BOCC/Commercial Risk*, ___ So.3d___ (Fla. 1st DCA 2025)**
Statute of Limitations/Reservation on Attorney Fees and Costs

In a lengthy opinion, the DCA held that in determining whether the statute of limitations (SOL) has run, dismissal of a petition for benefits (PFB) reserving as to fees and costs (but where no benefits were provided) will not toll the statute. However, if there were benefits provided pursuant to the dismissed PFB, a reservation on fees and costs may toll the SOL. In the underlying case, the claimant's date of accident was September 10, 2016. His first PFB was filed January 11, 2017, the employer/carrier (E/C) then denied benefits, and the claimant dismissed on July 17, 2017 (but reserved as to fees/costs). The claimant filed a second PFB on May 28, 2019. Subsequent PFBs in 2020 and 2021 were filed but dismissed. The judge of compensation claims (JCC) found the SOL had run. The DCA noted that the fee reservation in the initial dismissal, where no benefits were provided, did not toll the SOL because fees are collateral to benefits, and not benefits themselves. Thus, there was no pending PFB, and the SOL expired September 10, 2018. Subsequent PFBs then were also time barred. Click here to read the opinion.

***Sedgwick Claims Mgt. Svcs/the GEO Group, Inc. v. Thompson*, ___So.3d___ (Fla. 1st DCA 2025)**
Expert Medical Advisors/*Daubert*

The DCA affirmed the JCC's order, but wrote to address whether F.S. s. 440.25(4)(d) (governing procedures for workers' compensation hearings) precludes a *Daubert* challenge to expert medical advisor (EMA) opinions. The parties' respective independent medical evaluation (IME) opinions conflicted on the major contributing cause (MCC) of alleged neck injuries. The JCC denied the E/C's *Daubert* objection to the claimants' IME. The JCC appointed Dr. Cameron as the EMA to resolve the medical conflicts. Dr. Cameron found the MCC of the claimant's herniated cervical disc was the work accident. The E/C moved to strike Dr. Cameron's opinions at deposition and at trial per *Daubert*, which the JCC denied. The JCC awarded benefits based on Dr. Cameron's opinions. The DCA undertook a lengthy analysis of prior opinions considering admissibility of EMA opinions and *Daubert*. They ultimately held that although the JCC erred in applying the *Daubert* standard to determine admissibility of the report, it was harmless error, as the statute precludes *Daubert* challenges to EMA opinions. A concurring opinion seems to suggest the DCA can review any order, final or non-final, notwithstanding S. Ct. Rule 9.180. Click here to read the opinion.

***Siena v. Orange County Fire/Rescue/CCMSI*, ___ So.3d___ (Fla. 1st DCA 8/20/25)**
Powers of JCC/Attorney Disqualification

The DCA affirmed the JCC's order disqualifying the Bichler Longo firm from representing the claimant. The underlying issue resulted from the Bichler firm hiring an attorney who previously worked on the claimant's case for the defense firm. The defense firm moved to disqualify the claimant's firm although there was no pending PFB following the appeal of the JCC's original order denying the claimant widow death benefits. The DCA found the JCC had jurisdiction to disqualify the firm, and properly exercised his discretion in so doing. Judge Tannebaum issued a lengthy decision analyzing and discussing those issues, and seems to suggest the DCA may review any order, final or non-final. Click here to read the opinion.

***Mejia Palacios v. AHCA*, ___So.3d___ (Fla. 1st DCA 8/20/25)**
Medicaid Liens/Determination of Amount

The DCA reversed and remanded the administrative law judge's (ALJ's) determination of the percentage amount of an injured workers' settlement that should go toward reimbursing Medicaid. Medicaid paid $35,031.49 following the claimant's workplace fall. In discovery in the underlying case, it was shown the claimant had fall protection gear available, but that he conceded he declined to use it and it would have prevented his fall. The case settled for $238,500. There was no stipulation as to how much of that settlement was for medical care. F.S. s. 409.910(11)(f) provides a formula for Medicaid lien recovery, which is, "after attorney fees and taxable costs… one half the remaining recovery up to the total amount of medical assistance provided by Medicaid.". The Agency for Health Care Administration (AHCA) sought the full amount of the lien based on that formula, and Palacios filed a Department of Administrative Hearings (DOAH) petition, attended a hearing, presented two expert witnesses (regarding "full value," in relation to

his argument that the amount to recovered should be only for medical care proportional to his total damages), and entered documentary evidence. AHCA presented only the summary of expenses. The ALJ considered that evidence and "proportionality methodology" in determining that the amount the claimant should pay should be impacted by his comparative negligence (and thus not reduced). The DCA found there was no reasonable basis to reject Palacio's uncontroverted evidence in support of the lower lien. Click here to read the opinion.

***Dewald v. School District of Manatee County/Johns Eastern*, ___So.3d___ (Fla. 1st DCA 8/13/25)**
Summary Final Orders

The DCA affirmed the JCC's denial of a PFB for medical benefits pursuant to the E/C's motion for summary final order (SFO). The claimant's PFB sought pain management. The E/C filed the motion for SFO, and attached the authorized doctor's note stating such was not medically necessary or causally related. The claimant failed to present any contrary evidence. The DCA rejected the argument that the order should be reversed as it contained language that the JCC had "weighed the evidence" and "attempted to resolve conflicts in the evidence," as the claimant offered NO evidence. They rejected the argument that the authorized doctor could potentially testify differently in deposition, as mere suggestions of existence of material facts and intentions to depose witnesses are insufficient to preclude entry of an SFO. They noted no attempt was made to depose the doctor. The DCA also shot down the argument that the E/C waived the right to deny the request under the 120-day rule, as there was no evidence offered on this point, even on appeal. Click here to read the opinion.

***Rebalko v. Gillis/Head Industries/Amerisure*, ___ So.3d___ (Fla 1st DCA 8/6/25)**
Non-Final Orders

The DCA held that the order appealed was non-final and therefore not appealable. The order, which designated a proper payee for a mentally incompetent injured worker, was appealed by the claimant's discharged attorney who wanted his name to continue to appear on the claimant's permanent total disability (PTD) checks. Since the underlying fee dispute was not resolved, the DCA held that the order was not a "final appealable order." Therefore, the court dismissed the appeal. Many JCC orders do not fully dispose of all issues ripe for adjudication. Except in very limited situations, such orders may not be appealed. The First DCA lacks jurisdiction to review most non-final orders. Click here to read the opinion.

***Guglielmo v. State of Fla.-Doc Zephyrhills C I/ Div. of Risk Mgmt.*, ___So.3d___ (Fla.1st DCA 7/30/25)**
Presumption Claims/Date of Accident/AWW

The DCA reversed the JCC's holding in this presumption case, which found that although the claimant was eligible for five days of temporary total disability (TTD) and impairment income benefits (IBs) at 11%, he was due no benefits because his average weekly wages (AWW) was zero, as he was not an employee on the date of accident. The claimant worked for the Department of Corrections (DOC) for almost two years before voluntarily resigning in March 2021 due to health concerns. At the time of resignation, he was earning $673.20 per week. Approximately 119 days after leaving employment, he experienced heart palpitations and was diagnosed with atrial fibrillation. The DOC accepted the claim as compensable under F.S. s. 112.18 and authorized a cardiac ablation on December 16, 2021. He later experienced complications requiring that he be hospitalized for four days in February. The claimant sought TTD for the period he was hospitalized, and IBs. The JCC denied the requested benefits based on the fact that he was not an employee on the date of accident. The DCA noted that when an employer accepts compensability under the "heart-lung statute," it concedes that all statutory requirements are satisfied, including that the claimant is a covered employee. The DCA stated that in occupational disease claims, the relevant wages for AWW calculation are those earned during the period of injurious exposure, not on the date the condition manifests as disability. A separate opinion noted TTD should have been denied because the claimant did not incur at least seven days of disability. Click here to read the opinion..

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