

Minutes of Workers' Comp Section Executive Council Meeting  
May 19, 2012 in New York City

Attendees: Brian Sutter, Neal Falk, Geoff Bichler, Paolo Longo, Leo Garcia, Mark Touby, Rick Morales, Jason Lazarus, Jeff Jacobs, Bill Rogner, Tim Dunbrack, Phillip Augustine, Arlee Colman, Ray Malca, Mike Winer, Alan Kalinoski, Dawn Traverso, Mike Rudolph, Chris Smith, Glen Wieland, Bill Berke, Rick Thompson, Alison Hauser, Richard Chait, Bob Strunin, Chris Petrucelli, Paul Anderson

Minutes from January council meeting were approved.

Treasurer's report given - We are under budget on expenses and doing well.

Welcome - Jason Lazarus - guest - sponsor Synergy Settlement Services, Complex Settlement, MSAs, Trusts, Asset Management, Structured Settlements

Section CLE - Chris Petrucelli - Lunch and Learn to begin again in September. Speakers are needed.

Winter Ski Trip/CLE - this year there were 32 attendees. Viceroy gave the Section a credit from the prior year penalties so trip made \$9,000.00. Next year is planned for Vail, CO.

HB 903 - Brian Sutter - discussion on 57.105 fee. Reasonable fee paid against the carrier. Frivolous defence. Need 21 day letter. Also discovery fees being ordered under 60Q sanction for violations - Judge Pitts. 440.32.

Legislative Committee - Paul Anderson- many bills passed on various issues. Retraining changes - any open cases transferred to Division as of July 1. No new services being provided through Bureau of Re-Employment Services.

Repealed reporting requirement under 440.59 for DFS to prepare annual report.

Changes made to drug-free workplace for random drug screening of state employees.

Restrictions on repackaged drugs bill failed. Will be back in different form.

Excess Profits bill passed - normally Carriers limited on profits that can be secured and wanted to keep them. Signed by governor as well.

Bill failed regarding JNC process for JCCs. Attempt to eliminate statewide JNC for nominating JCCs and combine with JNC for 1st DCA. Issue will likely come back next year.

News & 440 - Mike Winer reported that Jeff Appel is now editor and is working on next issue. Arlee suggested use of an outside editor for formatting, proofing, etc. which could help ease the burden on the acting volunteer editor.

Appellate Issues - Bill Rogner - motions for extensions of time seem to be getting granted at this time. Several pending fee appeals. One case awarding hourly fee in post July 1, 2009 case. Carrier wouldn't agree fee owed. JCC ordered stat fee on benefits and hourly fee on time expended in proving entitlement. Case is Dept. of Corrections v. Larry Ferguson 11-6860.

Constitution case - 10% PIR from psych - JCC found 10% rating, but awarded 1% under the statute. Goodwin v. Mosaic Phosphate 12-885.

Membership - Paolo reported that there has been an increase in members for the first time in the last 4 years.

Forum Committee - Alison Hauser reported that the seminar was attended by more lawyers and more sponsors with less expenses. Attendance: 229 attorneys and 140 WCCP members. Profit increased this year to \$17,713.34. She is recommending change in revenue split with WCCP due to decreased sponsorship on WCCP side as well as WCCP attendance. Section suggested renegotiating contract.

Rules Committee - Chris Smith - same general topics from last meeting. Proposed service of documents - e-service rule with Judge Langham

Proposed judgement on the pleadings rule similar to RCP 1.140. To be discussed on May 25th in a meeting with defence and claimant's bar representatives.

Proposal on jurisdiction of mediators rule - no wide support. Rule proposed that mediators not be permitted to mediate issues outside the jurisdiction of the JCC.

Safe Harbor Costs Rule added to 6.123(4) - \$250 or less does not require specificity or detail. Discussed as a jurisdictional issue not subject to JCC review.

Proposed green rule - telephonic mediation appearance rule for all parties. Generally, council felt that this would be a bad idea as it would thwart a meaningful mediation process. Council felt it would be best if the parties agree and not be a mediator discretion issue.

Rule to allow costs involved in proving fee amount.

Judiciary Committee - Proposal for WC Professional Guidelines ready. Approval process hoped to be completed by August 2012.

Incorporated new DOAH rules and e-filing requirements into guidelines.

Motion made to approve the guidelines with correction of typos and seconded.

Board Certification Committee - Testing completed - grading to be done June 22, 2012.  
20 re-certified.

Technology Committee - Arlee reported that contract is being negotiated with IT and webpage being updated.

Chairs Report

Nominations - 5th DCA defence seat vacancy - Joann Prescott - moved and seconded to fill. Passed.

At Large Vacancy created by Joann's vacancy of seat to take 5th DCA seat.

Legislative Positions - Moved and seconded to re-adopt current positions with new one on JNC.

Chair elect Report - Dawn raised the issue of holding a 4th calendared meeting of the council. Consensus was to not increase meetings.

Long range planning -

New Business -

Excused Absences - Joann Prescott and Martin Liebowitz. Moved and seconded as approved.

Future Meetings - Retreat 2013 - Boston or San Francisco. Consensus was to go to Boston

Steve Kronenberg scheduled to retire June 1, 2012.

Meeting adjourned.