

Workers' Compensation Section Executive Council Meeting

New York City, NY

May 22, 2010 - 9:00 p.m. – 11:00 a.m.

- I. Richard Chait, Chair - thanked everyone for attending and voiced his gratitude for everyone's efforts in joining together to work toward common goals. We need to continue in those efforts and not become complacent. He also thanked everyone for the opportunity to serve as chair.

Welcome/Introductions: Jason Lazarus - settlement services - Jason outlined the services offered by Settlement Synergy (complex lien resolution on flat fee basis - outsourcing) and Delta Structured Settlements. He also touched on services regarding non-Medicare issues and other complex settlement issues including trusts for special needs. He advised that he is able to address many issues in conjunction with Medicare and Medicaid and offers unique solutions to maintain both eligibilities.

Attendees:

- (1) Chris Petruccelli
- (2) Jason Lazarus (Guest Speaker - Complex Settlement Issues)
- (3) Alan Kalinoski
- (4) Jacque Blanton Steele
- (5) Bill Rogner
- (6) George Cappy
- (7) Leo Garcia
- (8) Richard Chait
- (9) Jeff Jacobs
- (10) Mark Touby
- (11) Ray Holly (phone)
- (12) Tara Sa'id (phone)
- (13) Robert Strunin (phone)
- (14) Ric Morales (phone)
- (15) Bill Berke
- (16) Richard Thompson
- (17) Paul Anderson (phone)
- (18) Brian Sutter
- (19) Arlee Colman (Florida Bar Liaison)
- (20) Geoffrey Bichler
- (21) Joanne Prescott (phone)
- (22) Mike Winer
- (23) Mike Rudolph (phone)
- (24) Tim Dunbrack
- (25) Fausto Gomez (phone)
- (26) Chris Smith
- (27) Rich Berman
- (28) Neal Falk

(29) Dawn Traverso

II. Minutes from 01/10: Jacqueline Blanton Steele, Secretary *Exhibit A Attached* - Attendance corrected to include Chris Petruccelli, Mike Winer and Diane Castrillon who were in attendance live at the January Joe's Stone Crab meeting. Jeff Jacobs was not present, but absence was excused. Motion made, seconded and minutes approved with corrections.

III. Treasurer's Report: Alan Kalinoski, Treasurer *Exhibit B Attached*

- A. Budget attached - Alan noted the success of expense/cost containment regarding CLE and 440 Report - He thanked Dawn Traverso and Mike Winer for their work noting that they both are doing an excellent job in saving section money and in creating sources of revenue.
- B. \$7500.00 profit anticipated from WC Forum Seminar
- C. Alan noted that we are thankfully under budget on speaker expenses as speakers are covering their own costs which has helped.
- D. Alan encouraged everyone to continue to be sensitive to budgeting needs/expenditures.
- E. Current year to date in bank is \$114,000.00. Expenses year to date are \$43,000.00

IV. Website Issues - other companies are able to better provide services to us. We have a quote for a company with a \$1,000.00 charge to switch services and then the Section's needs will dictate costs, but likely \$100.00 - \$200.00 per month thereafter. Currently we spend \$200.00 per month, but our site is out of date and equipment changes are needed. It may not be in our best interest to spend money to update equipment when changing to the other service would give us other options. Maintenance is about the same as our current expense, but differences in access and information with new company are significant and we should not be funding the existing company's equipment change over.

Website does have navigation issues and is not as user friendly as it should be. CLE process has significant issues with registration and posting brochures is problematic. We really need better access and more options and the problem is the equipment of the current company is obsolete which is causing issues.

It was agreed that a sub-committee would work on a formal proposal with specific information gathered to address section needs via report. Report would be given to council and then we would reconvene within 30 days to vote on recommendation. Ric Morales was named to chair sub-committee of the following other council members: Dawn Traverso, Richard Chait, Rick Thompson, Martin Liebowitz, Tim Dunbrack and Brian Sutter. Proposal/Report to be submitted for vote by phone by July 1st.

V. Committee Reports

A. BOG

Report to be given at meeting in Key West next week on May 26, 2010 by Jake Schickel. He is going to be running for the president of the Florida Bar and needs our support. Opportunity for WC Section to have greater access.

B. Legislative Committee:

Fausto Gomez - legislative session had very little activity. Issues will resurface next year on first responders - pension limits and reform is significant. Office of insurance regulation is now going after insurance companies for excess profits with 16 companies being asked to return premiums.

Paul Anderson - DOAH effort to allow filing of PFBs electronically vs certified mail failed, but will likely return as an issue next year. Also a bill to be back next year on out of state employers with reciprocity issue. NFL bargains for workers' compensation at present. When a player is hurt and they retire, they file for workers' compensation, but because clubs are self insured - they pay CA rates for coverage. New language would stop that process. If employer is in Florida and employee is injured with coverage existing in state where the employee was coming from, employee will be bound by that coverage and not the state where injury occurs.

Procedural bill on PFB filings - Langham/Cohen and Chait - already a mechanism in statute and rules of procedure that allow e-filing, but bill language that was proposed but not passed made it mandatory for e-filing of petitions if represented by legal counsel without exception. E-filing could be a problem with catastrophic issues - server problems - hurricanes - etc. Bill should allow for another option because of acute and emergent issues if e-file is not available especially with SOL issues. E-filing was not just for claimants - all responses had to be e-filed as well per this bill. This is an issue for both sides of the fence, but there needs to be a way to have an alternative for filing verses an absolute mandate. Mandatory was the requirement - optional was not well received. As a result, bill did not pass.

C. WC Forum

Jeff Jacobs reported that the Section held a successful seminar - profit of \$7,500.00 is expected. Attendance was 447 - huge success. Speakers got high evaluations - books sold out after seminar. Flash drive book is available approximately 10 left. Additional copies of flash drive can be made. Rick Thompson and Herb Langston were invaluable. Dawn Traverso, Chris Petruccelli, Mike Winer and Bill Rogner all spoke at the event and all did an outstanding job.

Future of seminar - concerns were noted that partnership needs to be maintained with

IARP and WCCP. Seminar needs to be marketed more to get attendance up in years to come. We need more sponsorships for the event in the future to maintain success. More section members need to attend including more council members as well. Jeff Jacobs agreed to continue as chair. Herb will no longer be serving as co-chair. Jeff requested 2-3 more chair members - Leo Gomez and Neal Falk volunteered as well as Joanne Prescott, and Mike Rudolph.

We need to push board certification for attorneys as well. No changes made for board cert requirements to date, but this needs to be addressed because of nature of practice and time frames for trials.

Paralegal attendance also needs to be marketed and encouraged as CLEs needed for paralegal certifications as well. Dates tentatively set for April 27-30, but conflicts with another seminar so it may change.

D. Section CLE

Dawn Traverso, Chair - CLE - Ski Seminar is set for Beaver Creek last week of February from the 20th through the 26th, 2011 at Ritz Carlton at approximately \$225.00 per night. Civil trial lawyers will likely be incorporated to increase attendance. Live seminar in February as well in 2011. The seminar will be done on alternatives to workers' compensation causes of action on February 11th in Orlando - at the Hyatt in Orlando at the airport. Very convenient for people to fly in and out and easy access from Tampa. Panhandle access is probably still an issue - but should be good attendance.

Ski seminar has to be noticed at least 6 months in advance as we had to guarantee room block for the Ritz and if block is not filled - could be a significant drain on the section budget.

Learn at Lunch Seminars are continuing with great post seminar sales of courses which provides excellent profit for the section.

E. News and 440

Mike Winer - as always - need articles from attorneys - next issue is coming out shortly. JCC survey is out and edition out in the next week to include push for completing survey - focus of issue on fraud. Still need to get hard copies disseminated to JCC offices.

F. Appellate Issues

Bill Rogner toured new construction of 1st DCA - will be an incredibly impressive facility when complete - two huge courtrooms - lots of space.

Recent case involved \$20,000.00 fee sanction by Judge Hill against Zaldivar firm.

Salinas vs. CAT Concrete. Agreed upon stipulated AWW, but later discovered that claimant was an illegal alien - AWW stipulation was thrown out. Motion for rehearing En Banc to be filed.

G. Membership Committee - Paolo Longo suggested that we possibly create an associate membership for claims representatives - but consensus was that it would not likely benefit claims' reps. Seeking volunteers for membership committee - Tim Dunbrack agreed to help on committee. 18% decline in membership since 2005.

H. Chair's Report - Richard Chait

1. Suspend And Defer Order - MSA issues. Order can be used in those cases where there is uncertainty with CMS and guarantee is not offered, in cases where agreements are pending and trial is not needed, but time is needed for approval - parties can request this order which avoids continuance and voluntary dismissal issues. Helps everyone because doesn't keep trial on dockets under continuance or a dismissal of PFB - NOT A STAY - just a "postponement".

We need to educate the bar and the judges that this is now a viable option for use.

Proposed order is available - each judge has discretion on wording of order and may reject it - but use it if possible.

Two pieces of federal legislation already pending as well as a bill spearheaded by FCCI to get this moving - but they are going nowhere at present. However, it does appear that there is a memo pending to move down the prescription costs issue as the changes made from last year have significantly decreased settlements and that appears to have been acknowledged.

It was agreed that the section would author a letter to the Federal representatives for our state to send to Judge Langham and gather some momentum with additional supporters to sign off on letter to address concerns by our section and the WC system.

2. Proposed Amendments to 60Q Rules - Working with Langham and Cohen. Proposals made by the rules advisory committee have been submitted along with others all submitted for drafting and back within the next month to be disseminated thereafter for public discussion during August convention.

3. Florida Bar Journal - To be released in June with Section Reports from all Chairs.

I. Chair Elect Report - Rick Thompson

1. Retreat Location - New Orleans location
- 2.. Committee Chairs/Membership - Will be maintained as they exist.
3. Long term planning - Discuss electronic balloting process for this year. 3rd DCA and At Large up - so most significant number of seats and look toward budget issues.

VI. New Business

- A. Section 440.34 Appeal - Section Involvement - Sub-committee can decide cases appropriate for expedited process - pass through jurisdiction and Amicus permission.
- B. Wireless Internet - Issue deferred due to budgeting concerns. Langham agreed to provide infrastructure, but section has to bear cost of phone lines. \$5.00 dues increase would more than cover costs. Request to be posted in News and 440 for input on interest. It will be discussed at August meeting with more specifics. Will also be addressed with BOG to get input. Videoconferencing to be addressed as well.
- C. Excused Absences - Some people requested excused absences, but names were not available. Motion to approve timely requested excused absences made, seconded and approved.

VII. Future Meetings

- A. August 15-18, 2010 FWCI Conference
- B. Jan 2011 Joe's Stone Crab - date to be determined - likely third week of the month.

VIII. Other Business

Mark Zientz requested the council take a position on Section 440.34 per 9.125 rules on issue of pass through jurisdiction because appeal is of great public importance and would expedite appellate process. It was discussed as to whether section should be involved. The council decided that given the bipartisan make-up of the section and the legislative mandates by which we are bound that this was not an appropriate course of action for the section to take position. Amicus possible depending upon case that arises.

The meeting was thereafter concluded and adjourned.