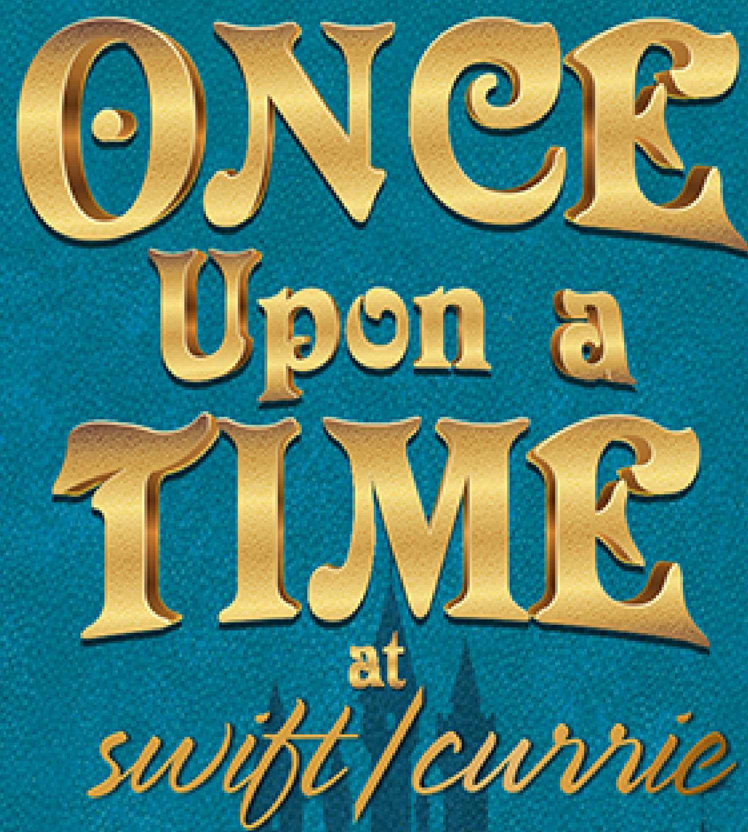

Workers' Compensation Virtual Seminar
September 17, 2021

swift/currie

Once Upon a Time at Swift Currie

Sept. 17, 2021

Annual (Virtual) Workers' Compensation Seminar

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Once Upon a Time at Swift Currie

Based on more than 50 years of representing clients in Georgia, Alabama and throughout the country, Swift, Currie, McGhee & Hiers, LLP, has evolved into a law firm capable of handling all areas of civil law and litigation. With approximately 160 attorneys, Swift Currie possesses the resources and abilities to tackle the most complex legal problems, while at the same time providing our clients with individualized, prompt and cost-effective service. Our law firm has a wealth of experience across numerous practice areas and our depth of legal talent allows us to tailor such strengths to individual cases. Our firm's philosophy is to provide our clients with creative, aggressive and professional representation of their interests. We also strive to conduct ourselves in a manner consistent with the legacy of our four founding partners. No matter the issue in dispute, Swift Currie has attorneys ready to assist you. We believe we have a well-deserved reputation for high-quality legal services and dedicated attorneys. Finding creative solutions to complex problems — that is our commitment to our clients.

Swift, Currie, McGhee & Hiers, LLP, does not intend the following to constitute legal advice or opinion applicable to any particular factual or legal issue. If you have a specific legal question, please contact the authors listed in this presentation.

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Seminar Agenda

Friday, Sept. 17, 2021

9:00 a.m. – 9:15 a.m.	**Welcome and Introduction** *Mark J. Goodman*
9:15 a.m. – 9:40 a.m.	**More Than Breadcrumbs: Litigation Strategies** *R. Briggs Peery*
9:40 a.m. – 10:05 a.m.	**This One Is Just Right: Medical Issues and Utilization Review** *M. Ann McElroy*
10:05 a.m. – 10:30 a.m.	**Under the C(ode)** *Ann M. Joiner*
10:30 a.m. – 10:40 a.m.	**Break**
10:40 a.m. – 11:05 a.m.	**The Ultimate Question: Why Is Humpty Dumpty Sitting on That Wall?** *Lisa A. Wade*
11:05 a.m. – 11:30 a.m.	**What Was in That Apple? The Evolving Landscape of Cannabis Legalization and Its Impact on Workers' Compensation Claims** *Joanna L. Hair*
11:30 a.m. – 11:40 a.m.	**Break**
11:40 a.m. – 12:05 p.m.	**A Whole New World: 2020-2021 Case Law Update** *Thea Nanton-Persaud*
12:05 p.m. – 12:30 p.m.	**Spinning Straw Into Gold: A Practical Guide to MSAs and Subrogation** *Douglas W. Brown, Jr.*
12:30 p.m. – 12:55 p.m.	**Bibbidi-Bobbidi-Boo-Boos: Compensability of Hernias in Georgia** *Jeff K. Stinson*
12:55 p.m. – 1:00 p.m.	**Seminar Wrap-Up/Door Prizes** *Mark J. Goodman*
1:00 p.m.	**Q&A With Presenters (in Exhibit Hall)**

Table of Contents

More Than Breadcrumbs: Litigation Strategies 1
By R. Briggs Peery

This One Is Just Right: Medical Issues and Utilization Review 4
By M. Ann McElroy

Under the C(ode) 10
By Ann M. Joiner and Nichole C. Novosel

The Ultimate Question: Why Is Humpty Dumpty Sitting on That Wall? 16
By Lisa A. Wade and G. Scotty Hoffman, Jr.

What Was in That Apple? The Evolving Landscape of Cannabis Legalization and Its Impact on Workers' Compensation Claims 23
By Joanna L. Hair

A Whole New World: 2020-2021 Case Law Update 29
By Thea Nanton-Persaud

Spinning Straw Into Gold: A Practical Guide to MSAs and Subrogation 41
By Douglas W. Brown, Jr. and Monica S. Goudy

Bibbidi-Bobbidi-Boo-Boos: Compensability of Hernias in Georgia 47
By Jeff K. Stinson

Attorney Biographies 52

Attorney Contact Information 76

More Than Breadcrumbs: Litigation Strategies

By R. Briggs Peery

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R. Briggs Peery is a partner with Swift Currie who has more than 32 years of experience representing clients in workers' compensation and general litigation matters. Briggs handles both minor and complex matters for an array of clients from small, family-owned businesses to global companies in the automotive, textile, staffing, cable, food service and insurance industries.

Briggs has a track record of success and prides himself on being organized, efficient, knowledgeable on the law and an outside-of-the-box thinker. He looks at each new case as an opportunity to craft a tailor-made approach to resolve claims and achieve his clients' goals in the most effective and efficient way, whether through mediation or litigation.

Briggs values his client relationships, as well as his relationships with the workers' compensation judges and claimants' attorneys. Having practiced in the workers' compensation field for so many years, Briggs understands how the court functions and has invaluable knowledge on how to get a claim resolved. Also, he serves as the chairman of the Legal Committee for the State Board of Workers' Compensation.

Briggs has spoken on workers' compensation topics at multiple claims and state bar seminars, as well as Georgia Chamber of Commerce, municipal, employer and self-insured functions. Additionally, Briggs is involved in workers' compensation issues on a state and national level through his work with the Workers' Compensation Institute.

More Than Breadcrumbs: Litigation Strategies

It is easy to be ruled by emotion at the onset of a workers' compensation claim. The deadline to accept or deny the case passes quickly. Oftentimes, claimants are immediately clamoring for benefits and doctors are calling for authorization to treat daily. Take heed. This is not a time for a rush to judgement. Things are not always what they seem. Not only may the employee's allegations of the work injury be untruthful, but the employer's comments on the same subject may be inaccurate as well. Do not assume anything. Remaining objective during the investigation process is critical.

The goal of the objective investigation is to obtain the truth. Hopefully, the truth will help the employer's defense of the claim. If not, it will, at the very least, enlighten the employer/insurer toward the path to the most practical and achievable pro-employer/insurer outcome.

The employer/insurer should be mindful that each case/fact pattern is different. The same factual setting with one claimant, claimant attorney, doctor(s) or administrative law judge (ALJ) may yield a different result with another claimant, claimant attorney, doctor(s) or ALJ. Some doctors are viewed to be more credible than others. Some claimants are more sympathetic than others. Some judges are more pro-employee than others. Finally, some claimants' attorneys are more litigious than others. All of these things are significant factors to consider when determining the best outcome for the employer/insurer in each claim.

If it is determined the best outcome for the employer/insurer is to take the case to court and let the ALJ rule, then the next step for the employer/insurer will be shoring up their defenses. In addition to gathering testimony from the employer witnesses or other potential witnesses and taking the claimant's deposition, other measures include independent medical evaluations (IMEs) and depositions of medical experts.

If it is determined the best outcome for the employer/insurer is a lump sum settlement, there are still proactive measures to take. These include IMEs, expert depositions and taking the claimant's deposition. Keep in mind that a settlement mediation is an excellent opportunity to inundate the claimant and his attorney with persuasive legal arguments and medical evidence that detract from claim value — if not the claim's compensability altogether.

Sometimes the best outcome for the employer/insurer does not involve complete resolution of the case through trial or settlement. Rather, there may be times when it makes no monetary sense for the employer/insurer to try the claim or even settle it at a given point. In these settings, the facts may force the employer/insurer to accept the claim, but hope to ultimately obtain a regular duty work release, allowing it to unilaterally suspend income benefits. Likewise, the employer/insurer may opt to await a light duty work release, at which point it can offer the claimant a job and suspend income benefits. Yet another common scenario is where the claim is accepted as compensable, but the medical side of the claim is not yet ripe for a pro-employer/insurer resolution. In this situation, the employer/insurer's best move may be to obtain a Board order granting a change in treating doctors or obtain another medical opinion altogether in hopes of avoiding a treatment plan recommended by the authorized treating physician, etc.

Regardless of the ultimate resolution goal (litigation, settlement or somewhere in between), being able to adapt on the fly to developing investigation results is imperative. Expect the unexpected. Always try to anticipate the next move. It is always better to act than react. As my father told me more times than I care to count growing up . . . "Failing to plan is planning to fail!"

This One Is Just Right: Medical Issues and Utilization Review

By M. Ann McElroy

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M. Ann McElroy is a senior attorney who defends employers and insurers in workers' compensation claims. Her clients include county governments, insurance companies and large-scale claims management companies, to name a few.

Ranked by her peers among an elite group of attorneys who earn the AV Preeminent Rating, Martindale-Hubbell Peer Review, Ann coauthored an amicus brief to the Georgia Court of Appeals on behalf of the Georgia Defense Lawyers Association (GDLA) for the prevailing party regarding the issue of whether workers' compensation statute O.C.G.A. § 34-9-221(h) defines "compensation" as to include medical benefits. She has prevailed in multiple hearings in front of various administrative law judges.

Attentiveness to all details and putting the needs of clients first is the hallmark of Ann's practice. She is highly skilled in counseling clients regarding difficult decisions of whether a case should be tried or settled. A diligent approach and keen cost-analysis capabilities support Ann's success.

Before joining Swift Currie, Ann clerked in a medical malpractice firm. In addition, she prosecuted misdemeanors for Fulton County during her third year of law school and after graduation. She also practiced at a criminal defense and plaintiff firm for four years before switching to workers' compensation defense.

This One Is Just Right: Medical Issues and Utilization Review

At the crux of every workers' compensation claim lies an alleged injury and a resulting question of compensability, which turns upon medical evidence. While the claimant bears the burden of proving the alleged injury arose out of and in the course of employment in order for a claim to be compensable, defense of a claim often involves sorting out and refuting medical evidence to make it harder for the claimant to carry his burden of proof by a preponderance of the credible evidence. This paper will explore some of the trickier medical issues involved in defense of a claim — from statutory definitions of "injury" to the use of utilization review/peer review.

AGGRAVATION OF PRE-EXISTING CONDITIONS

In order for an employee to recover workers' compensation benefits, he did not have to be in perfect health or free from disease at the time of the injury. Rather, all employees bring certain infirmities to their employment. Employers must take them as they are and assume the risk of a diseased condition aggravated by injury.[1] In essence, if an employee is in the course of employment and the exertion of employment, no matter how slight or to what degree, contributes to the accident, the injury is compensable.[2] The aggravation or acceleration of a pre-existing latent infirmity may be a compensable disability even though the same accident would not have brought any harm to a perfectly healthy individual.[3]

Under O.C.G.A. § 34-9-1(4), "injury" is defined as including the aggravation of a pre-existing condition by accident or arising out of and in the course of employment, but only as long as the aggravation of the pre-existing condition continues to be the cause of the disability. The pre-existing condition no longer meets this criteria when the aggravation ceases to be the cause of the disability.[4] Furthermore, a specific job-connected incident is not required for the aggravation of the pre-existing condition to be found compensable. The employment does not have to be the sole cause of the disability, so long as it is a contributing cause. Essentially, if an individual's employment can be traced to the disability as a contributing cause, it does not matter what combines with it to produce the disability.[5] In *Colonial Stores, Inc. v. Hambrick*, although the employee had pre-existing lung disease, his employment duties entailed continuous exposure to freezing temperatures at work, which caused him to have a higher rate of susceptibility to lung infections and aggravated his pre-existing lung disease.[6] Similarly, in *Thornton Chevrolet, Inc v. Morgan*, an employee, who was a painter for over 40 years, had an underlying problem of chronic bronchitis and emphysema due to his smoking habits. The judge found that this pre-existing condition was aggravated by a series of episodes in which the employee, at his place of employment, breathed fumes containing isocyanates (a substance in paint hardening compounds used in acrylic enamel paint). While appellants contended the exposure caused only a temporary disability and the present disability was a result of the employee's chronic emphysema caused by his history of smoking, the court pointed to a doctor's testimony that exposure to irritants could aggravate the underlying disease to the point of disablement. The court held the aggravation of the pre-existing condition was sufficient to constitute the cause of the employee's inability to work and was a compensable injury.[7]

Once the employment aggravation of a pre-existing condition ends, the employer/insurer is no longer responsible for that condition. As stated previously, in order to fall under the defined area of a compensable injury, the pre-existing condition shall no longer meet this criteria when the aggravation ceases to be the cause of the disability.[8] There are two scenarios in which an employer may terminate responsibility for any further disability benefits under aggravation of pre-existing condition cases. First, when an employer simply suspends payment of disability benefits to a claimant based upon a change for the better in the claimant's

1 *Lumbermans Mut. Cas. Co. v. Griggs*, 190 Ga. 277, 9 S.E.2d 84 (1940).
2 *Brown Transport Corp. v. Jenkins*, 129 Ga. App. 457, 199 S.E.2d 910 (1973).
3 *Davis v. Bibb Mfg. Co.*, 75 Ga. App. 515, 43 S.E.2d 780 (1947).
4 O.C.G.A. § 34-9-1(4).
5 *Atlanta Transit Co. v. Knight*, 92 Ga. App 469, 88 S.E.2d 738 (1955); *Home Depot v. McCreary*, 306 Ga. App. 805, 703 S.E.2d 392 (2010).
6 *Colonial Stores, Inc. v. Hambrick*, 176 Ga. App. 544, 336 S.E.2d 617 (1985).
7 *Thornton Chevrolet, Inc. v. Morgan*, 148 Ga. App. 711, 252 S.E.2d 178, 178 (1979).
8 O.C.G.A. § 34-9-1(4).

condition, this is effectually contesting responsibility for any further disability benefits. However, under this scenario, the employer remains responsible for any future authorized and reasonably necessary medical expenses incurred by the claimant in the treatment of the on-the-job injury.[9]

On the other hand, there are "termination of aggravation" cases under O.C.G.A. § 34-9-1(4). Once the pre-existing condition is no longer aggravated by the claimant's employment activities, the employer arguably has no further responsibility for disability benefits or medical benefits. In these scenarios, in order to terminate a claimant's entitlement to workers' compensation benefits, an employer need not show that the claimant has returned to his pre-existing physical condition, but instead need only show that the claimant's present disability is not casually connected to his employment.[10] In *Worthington Industries v. Sanks*, the administrative law judge (ALJ) determined that after an employee reached maximum medical improvement (MMI), his on-the-job injury had resolved and was no longer the cause of any disability.[11] The employee's physician found the employee had reached MMI even though he continued to have low back pain with some radiation down the left leg, aggravated by prolonged sitting due to his status as a full-time student. The ALJ and the Appellate Division found, although the employee continued to have pain and disability, those problems were not causally related to his prior injury at work, but rather to an unrelated aggravation of a congenital defect. After the Superior Court reversed and held the employer was required to show there had been a change in condition for the better, such that the employee had returned to his pre-existing physical condition, the Court of Appeals reversed back, holding the employer only needs to establish that benefits were terminated because the employee's disability was not causally connected with his employment.[12]

If there is not an award establishing compensability of the claimant's work injury nor employer/insurer acceptance of liability regarding the injury, but only voluntary payment by the employer/insurer of the claimant's authorized medical expenses from the aggravation of the pre-existing condition, the claimant bears the burden of proving entitlement to continued medical treatment for the alleged aggravation.[13] In *Bibb County Board of Education v. Bembry*, the claimant's authorized treating physician (ATP) opined that the muscular strains resulting from the work-related injury had resolved and her continued pain was related to a pre-existing condition. However, there was a contrary, second medical opinion in which another physician opined the claimant had not returned to her pre-injury baseline after her fall aggravated her previous condition. More weight was given to her ATP's opinion and the Court of Appeals found that the claimant's work-related injury caused a temporary aggravation of a pre-existing condition and such aggravation had resolved.[14] The Court of Appeals held the claimant failed to carry her burden of proof that she was entitled to further workers' compensation benefits by failing to prove her work-related injury had not resolved.[15] It does not fall on the employer/insurer to prove the aggravation has ceased, but, instead, the burden of proof is on the claimant.

OCCUPATIONAL DISEASE VERSUS OCCUPATIONAL INJURY

The common workers' compensation claim involves an allegation of occupational injury, and the Georgia Workers' Compensation Act simply requires the claimant prove his injury arose out of and in the course of employment.[16] On the other hand, an occupational disease under Georgia law requires the claimant not only prove the disease arose out of and in the course of employment, but the claimant must also prove five additional prerequisites.[17] It is clear the claimant in an occupational disease claim has a far greater burden of proof than a claimant in a traditional injury claim. In general, it has been

9 *Gen. Ins. Co. v. Bradley*, 152 Ga. App. 600, 263 S.E.2d 446 (1979).
10 *Worthington Indus. v. Sanks*, 228 Ga. App. 782, 492 S.E.2d 753 (1997).
11 *Id.*
12 *Worthington Indus. v. Sanks*, 228 Ga. App at 782, 492 S.E.2d 753 (1947).
13 *Smith v. Mr. Sweeper Stores*, 247 Ga. App. 726, 544 S.E.2d 758 (2001).
14 *Bibb Cnty. Bd. of Educ. v. Bembry*, 286 Ga. App. 878, 650 S.E.2d 427 (2007).
15 *Id.*
16 O.C.G.A. § 34-9-1(4).
17 O.C.G.A. § 34-9-280(2).

held that where a claimant's disabling disease results from the unusual, sudden and unexpected exposure to an injurious risk at work, a disability not incidental to the work being performed will usually be deemed to be the product of an occupational injury rather than an occupational disease.[18] In *Hopkins v. Employers Mutual Liability Insurance Co.*, the court held the parties properly classified the exposures as injuries by accident rather than as occupational diseases. In this case, the claimant suffered carbon monoxide poisoning incurred through the use of equipment not normally used in the claimant's job. As such, the hazard was not due to causes and conditions characteristic of the claimant's job.[19] Similarly, in *Moone v. Liberty Mutual Insurance Co.*, an employee accidentally, on a single day only, inhaled the fumes of a noxious gas at work. After inhaling the fumes, the employee began to cough up blood and died two days later. It was held the employee suffered from an occupational injury and not an occupational disease.[20]

On the contrary, a disability is deemed the product of an occupational disease if the claimant's disabling disease results from the usual, gradual and expected exposure to an injurious risk at work. In *Nowell v. Employers Mutual Liability Insurance Co.*, the claimant, a cement spreader, was seeking benefits for infection/irritation of the skin on his legs. As he was standing in cement over a period of years, his condition was not that of an occupational injury, but instead was an occupational disease.[21] In order to classify as an occupational disease, the disease must have arisen out of and in the course of the particular trade, occupation, process or employment in which the employee is exposed to such disease, in addition to the claimant proving the following five prerequisites:

1. A direct causal connection between the conditions under which the work is performed and the disease;
2. The disease followed as a natural incident of exposure by reason of the employment;
3. The disease is not of a character to which the employee may have had substantial exposure outside of the employment;
4. The disease is not an ordinary disease of life to which the general public is exposed; and
5. The disease must appear to have had its origin in a risk connected with the employment and to have flowed from the source as a natural consequence.[22]

As with an occupational injury, medical evidence refuting any of these prongs may prevent the claimant from carrying his burden of proof by a preponderance of credible evidence. Accordingly, claims adjusters and defense counsel often secure evidence in the form of independent medical examinations, medical records reviews, utilization reviews and peer reviews. Each of these options has its own considerations, advantages and pitfalls in challenging a medical claim.

UTILIZATION REVIEW/PEER REVIEW

For an employer/insurer to be made liable for particular medical expenses incurred by an employee, the expenses must not only be the "usual, customary and reasonable" charges, but the treatment or testing itself must also be "reasonably required" to "effect a cure, give relief, or restore the employee to suitable employment."[23] Consequently, in addition to challenging whether a compensable injury occurred, tools such as utilization review (UR) and peer review can be employed to determine what specific treatment and/or expenses are reasonable with respect to a compensable injury. However, both utilization and peer reviews are tricky. Board Rule 203(c) provides a list of acceptable peer review committees approved by the Board.[24] These peer review committees include the following: Georgia Psychological Association; Georgia Chiropractic Association, Inc.; Appropriate Utilization Group, LLC; and other such committees the Board has designated.[25] A peer review from any other source may be leveraged by submitting it to a treating physician for comment, but it will not likely be given much credence by the Board.

18 *Hopkins v. Emp's Mut. Liab. Ins. Co.*, 103 Ga. App. 579, 582, 120 S.E.2d 321, 324 (1961).
19 *Hopkins v. Emp's Mut. Liab. Ins. Co.*, 103 Ga. App. at 579, 120 S.E.2d 321 (1961).
20 *Moone v. Liberty Mut. Ins. Co.*, 145 Ga. App. 629, 244 S.E.2d 148 (1978).
21 *Nowell v. Emp's Mut. Liab. Ins. Co.*, 93 Ga. App. 288, 91 S.E.2d 389 (1956).
22 O.C.G.A. § 34-9-280(2).
23 O.C.G.A. § 34-9-200(a)(1).
24 Board Rule 203(c).
25 Board Rule 203(c)(2).

UR can assist claims handling in many aspects. This process can help with understanding medical aspects of the claim, evaluating and preparing for settlement negotiations and controlling medication costs. Determining whether a treatment or medication should be denied can be addressed as well. Realistically, the UR process provides a "sentinel" function for difficult providers. The review is to determine the necessity of services requested or already performed, including but not limited to such services as medical, pharmacy and surgical. The review can also evaluate medical causation, as well as the previously mentioned aggravation of pre-existing condition and return to baseline. Other aspects of UR include permanent partial disability determination and changes in treating physician, as well as treatment, diagnoses and recommendations.

As with peer reviews, it should be noted that URs are not admissible grounds for denial of a claim. Indeed the Workers' Compensation Act's only reference to utilization and peer reviews specifically precludes their use in "any action, suite, or proceeding except to the extent considered necessary by the Board" and prohibits examining any personal participating in UR or peer review activities.[26] Thus, URs are best leveraged by asking the treating physician to reconsider or explain whatever treatment the UR found unreasonable. When wanting to pursue utilization review, there is a cost-benefit analysis that must be done as medical review is expensive. An employer/insurer must look at the purpose and scope of the review to determine if the time involved and costs are justified. If the employer/insurer denies treatment on the ground the treatment is not reasonably necessary, as determined in the UR process, the burden of proof shall be on the employer/insurer.[27] Importantly, the insurer will need evidence other than the UR report to support its denial and carry its burden of proof. If the treatment is controverted on the basis it is not authorized or it is unrelated to the compensable injury, the burden of proof will be on the employee. [28]

CONCLUSION

In all, there are a myriad of issues that may arise by simply defining the type of injury in any given claim. However, the employer/insurer can mitigate liability by paying close attention to the specifics of each claim from the outset. Fortunately, there are many protections an employer/insurer can assert to ease these burdens.

[26] O.C.G.A. § 34-9-208.
[27] Board Rule 205(d)(1).
[28] *Id.*

Under the C(ode)

By Ann M. Joiner and Nichole C. Novosel

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Ann M. Joiner is a partner at Swift Currie with more than 10 years of experience practicing primarily in the area of workers' compensation defense. Ann has significant experience representing employers, self-insureds and third-party administrators in numerous workers' compensation claims throughout the state of Georgia. Ann represents clients in the waste removal, retail and food and beverage industries, to name a few.

Ann values developing meaningful relationships in her practice. In addition to her relationships with her clients, Ann also has personal relationships with the claimants' attorneys. Litigation is by nature adversarial, but she believes being civil and professional with opposing counsel garners fruitful results.

Ann is committed to being a trusted partner with great relationships with her clients, and she ensures that she is available whenever they need her. Ann's clients trust her and know she is dedicated to solving their legal issues promptly.

Ann has lived in numerous locations in the Midwest and the South and has had to adapt to different personalities and perspectives. She translates her adaptability into her work life by creating tailor-made strategies for each matter she handles. No two cases are the same. Therefore, she treats each case as a new challenge.

Ann frequently presents to employers and insurers on workers' compensation defense strategies, light duty return to work issues and employer compliance with statutory rules.

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Nichole "Nicki" Novosel practices workers' compensation defense, as well as employment law defense and counseling. Her clients include employers and insurance carriers.

Nicki leverages her educational background in business administration and marketing in both her workers' compensation and employment law defense and counseling practice. Understanding the vital functions of business operations provides key insight into the strengths and weaknesses of the businesses she represents, which better positions her to create sound strategies that steer clients to successful outcomes.

Serving clients with an integrated and proactive approach, Nicki is a highly effective communicator who builds trustworthy relationships that facilitate meaningful and productive conversations with clients. She is personable and always available to speak with clients to develop and implement strategies that lead to cost-effective solutions.

Nicki began her career with Swift Currie as a summer associate before joining full time in 2018.

Under the C(ode)

Timing is everything. In our personal lives, time often shapes our plans for the next few minutes, days, hours, weeks, months and years. For instance, if we are planning a trip to Disney World, the first thing we consider is when we will go — perhaps during a school break. We then consider where we are staying based upon pricing and availability. Of course, this also depends on time. Where we decide to stay determines when we can purchase our tickets and book our roller coasters, meals and other experiences at the parks.

The Georgia Workers' Compensation Act (the Act) is not so different from planning a trip and going to Disney World, though maybe not as fun. When an employer/insurer or attorney receives notice of a possible workers' compensation claim, the next steps and options to limit exposure are considered. Following the timing rules under the Act will make your claim experience better and more cost-effective, just like following the timing rules at Disney World. While the Act and Board Rules provide many other timing requirements, the most common ones come into play when an employer/insurer commences benefits, offers the claimant a suitable light duty job and suspends benefits.

COMMENCING BENEFITS AND THE SEVEN-DAY WAITING PERIOD

When commencing benefits, O.C.G.A. § 34-9-220 provides that an employer/insurer is not required to pay benefits for the first seven calendar days the claimant misses work because of their injury unless the claimant misses 21 consecutive days because of their injury.[1] The purpose of the seven-day waiting period is to avoid burdening the workers' compensation system with claims involving very little lost time from work and encourage an injured employee to return to work earlier.

Board Rule 220 specifies the computation of the seven-day waiting period. The seven days begin the day the claimant is injured and unable to work a full day, unless they are paid in full on the day of the injury, in which case, the waiting period will begin on the next day following the day of the injury.[2] While the seven days include all calendar days, even intervening days the claimant is not scheduled to work, they do not need to be consecutive.[3]

After the 21st consecutive day of lost time following an injury, the employer/insurer must retroactively pay benefits due for the seven-day waiting period or a late penalty shall be added.

ACCEPTING OR CONTROVERTING CLAIM WITHIN 21 DAYS

A 21-day time consideration also applies to filing a Form WC-1 or WC-3. If a claimant misses more than seven days from work, an employer must file a WC-1 First Report of Injury within 21 days of its knowledge of an injury or disability. Likewise, if the employer/insurer is denying a claim, a Notice to Controvert through subsection C of the WC-1 or WC-3 must be filed on or before 21 days after an employer has knowledge of an injury or disability.[4] Failure to timely controvert the claim through the WC-1 or WC-3 may result in a late penalty on benefits accrued and attorney's fees.[5]

CONVERTING BENEFITS AFTER FILING A FORM WC-104

If a claimant has been cleared to work with restrictions but is not working and their injury is not catastrophic, an employer/insurer may unilaterally convert its temporary total disability (TTD) benefits to temporary partial

1 O.C.G.A. § 34-9-220.
2 Board Rule 220(a).
3 *Id.*
4 Board Rule 221.
5 *Id.*

disability (TPD) benefits based upon a change in condition for the better.[6] Additionally, when the claimant's benefits are reduced to TPD, the statutory cap on benefits also decreases from 400 weeks to 350 weeks.[7]

To unilaterally convert an employee's TTD benefits to TPD benefits, the employer/insurer must first file a Form WC-104. The employer/insurer must also attach the medical report demonstrating the claimant is capable to work with restrictions. Board Rule 104 requires this form to be filed and served upon the claimant and their attorney no later than 60 days after the claimant is released to return to work with restrictions or limitations by the authorized treating physician (ATP).

After the WC-104 is properly filed, the employer/insurer may unilaterally convert the claimant's income benefits from TTD to TPD after the employee has been capable of performing work with limitations or restrictions for 52 consecutive weeks or 78 aggregate weeks.[8] The conversion date is determined by the date the claimant was released to work, not the date the WC-104 was filed.[9] The employer/insurer must then file and serve a Form WC-2 Notice of Payment or Suspension of Benefits with the supporting attachments of the WC-104 and the medical report on which the WC-104 was based.

RETURNING TO WORK THROUGH THE 240 PROCESS

After a claimant is cleared to work with restrictions, they may be offered a suitable light duty job through the "240 process." If the claimant unjustifiably refuses an offer of suitable light duty employment, their refusal can constitute a basis for suspension of the claimant's disability benefits.[10] Further, if the employer/insurer follows the provisions of O.C.G.A. § 34-9-240 and Board Rule 240, they may suspend the claimant's benefits without an order from the Board.[11]

To offer a claimant a light duty job, the employer/insurer must first obtain a light duty work release from the ATP. Then, the employer must identify a suitable light duty job for the claimant within the ATP's restrictions and prepare a Form WC-240a Job Analysis, which provides a detailed description of the job for the physician to approve. After the WC-240a is prepared, the employer/insurer will send the it to the ATP, the claimant and their attorney.[12] Importantly, Board Rule 240 requires the employer/insurer provide the claimant and their attorney with the WC-240a at the same time it is submitted to the ATP.[13]

The WC-240a must then be approved by the ATP within 60 days of the claimant's last examination.[14] Follow up with the physician's office may be necessary to ensure the job is approved within the 60-day time limit. If the job is not approved by the ATP, the employer/insurer will need to determine what changes need to be made for approval and resend the Form WC-240a to the physician, the claimant and their attorney.

After the WC-240a is approved by the ATP, the employer/insurer must then prepare a Form WC-240 Notice of Employee of Offer of Suitable Employment. The claimant must have notice at least 10 days prior to her scheduled return date. The WC-240 must then be sent to the claimant and their attorney along with the WC-240a.

If the claimant does not return to work on the scheduled date of return or fails to work more than eight cumulative hours or one scheduled workday (whichever is greater), O.C.G.A. § 34-9-240 and Board Rule 240 permit the employer/insurer to suspend benefits unilaterally by filing a WC-2 along with the WC-240a and WC-240. Please note, if the insurer is filing the Form WC-2 via electronic data interchange (EDI), a copy of the supporting medical report from the claimant's ATP must also be attached.[15]

If the claimant returns to work for eight cumulative hours or one scheduled workday (whichever is greater), but is unable to perform the job for more than 15 working days, the employer/insurer must immediately reinstate

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6 O.C.G.A. § 34-9-104(a)(2); Board Rule 104.

7 O.C.G.A. § 34-9-261. (Provides the claimant may not receive compensation for TPD for a period not exceeding 350 weeks from the date of injury).

8 O.C.G.A. § 34-9-104(a)(2); Board Rule 104.

9 Board Rule 104.

10 O.C.G.A. § 34-9-240.

11 *Id.*

12 Board Rule 240.

13 *Id.*

14 *Id.*

15 Board Rule 240(b)(2).

weekly benefits.[16] Failure to reinstate benefits will result in the waiver of the employer/insurer's defense of the suitability of employment for the period of time the employer/insurer did not pay the employee's weekly income benefits when due.[17]

When an employee unjustifiably refuses the proffered suitable light duty job, an employer/insurer may also seek the suspension of benefits by filing a hearing request to address the suitability of proffered employment.[18] Additionally, the employer/insurer can file a motion requesting suspension of benefits simultaneously or at any time during the pendency of the hearing and award.[19] If an employer/insurer is filing a motion, however, the employee must have been examined by the ATP(s) within 60 days prior to this request for suspension of income benefits.[20] As such, the whole 240 process must take place within 60 days or the claimant must have undergone another examination and been cleared to work with restrictions. Additionally, the motion must be accompanied by an affidavit from the employer setting forth that suitable employment has been offered to the employee, the offer is continuing and the analysis of the job is attached.[21]

In practice, a question may arise concerning whether the claimant would be entitled to benefits should they eventually attempt the proffered job for the requisite period of time after initially failing to report to the job. In this situation, a judge is likely to determine income benefits were due from the time the claimant attempted the proffered job for the eight cumulative hours or one scheduled workday and was then unable to perform the job for more than 15 workdays. The employer/insurer would then need to seek reimbursement of these benefits by filing a hearing request to address the suitability of proffered employment.

SUSPENDING BENEFITS AND THE 10-DAY NOTICE REQUIREMENT

When an employer/insurer suspends income benefits, a WC-2 must be filed to document the suspension. Generally, suspending a claimant's benefits requires 10 days' advance notice unless the claimant has actually returned to work.[22]

If a claimant is cleared to work without any restrictions by their ATP, the claimant must have a 10-day notice before benefits are suspended. The employer/insurer must also attach the supporting medical report to the WC-2.[23] Additionally, the ATP must have examined the claimant within 60 days of the effective date of release.[24]

When suspending benefits based on an unjustifiable refusal of a suitable light duty job through the 240 process, the WC-2 provides that the employer/insurer sent a WC-240 at least 10 days before the claimant was required to report for work. Though the WC-2 does not require a 10-day notice, the WC-240 seems to effectively serve as the 10-day notice for suspension of benefits. In this case, the claimant's benefits would be suspended when they actually returned to work or refused to return to work on the date they were scheduled to return.

16 O.C.G.A. § 34-9-240(b)(2); Board Rule 240(c).
17 Board Rule 240(c)(i).
18 Board Rule 240(e).
19 *Id.*
20 *Id.*
21 *Id.*
22 Board Rule 221(i).
23 *Id.*
24 *Id.*

CONTROVERTING BENEFITS AFTER INCOME BENEFITS ARE PAID

An employer/insurer may later controvert a claim after commencing benefits by filing a WC-3 and WC-2 within 60 days of the due date of the first payment of income benefits. If benefits have continued for more than 60 days after the due date of the first payment, the claim may only be controverted based on newly discovered evidence by filing a WC-2 and WC-3. In this case, a 10-day notice is required prior to the first omitted payment of income benefits.[25]

KEY TAKEAWAYS

The Georgia workers' compensation system has several important time requirements. Here are the key time limits when commencing or seeking to suspend a claimant's benefits:

- SEVEN-DAY WAITING PERIOD
  - Benefits are not due for the first week of missed work until the claimant has missed 21 consecutive days.
- 60-DAY REQUIREMENTS
  - 60 days from the claimant's release to return to work with restrictions or limitations to file a WC-104
  - 60 days from the employee's last examination with the ATP to obtain approval for a light duty job pursuant to the 240 process
  - 60 days from the employee's last examination with the ATP to obtain a full duty release to suspend benefits
  - 60 days from the first payment of benefits to controvert a claim (otherwise newly discovered evidence is required)
- 10-DAY NOTICE TO THE CLAIMANT
  - 10-day notice of the claimant's scheduled return date when returning the claimant to work through the 240 process
  - 10-day notice prior to the suspension of the claimant's benefits after a full duty release from the ATP or change of condition other than an actual return to work
  - 10-day notice prior to the first omitted payment of income benefits after controverting a claim based on newly discovered evidence

[25] O.C.G.A. § 34-9-221(i).

The Ultimate Question: Why Is Humpty Dumpty Sitting on That Wall?

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Lisa A. Wade defends employers in workers' compensation matters when employees allege injuries on the job. As she regularly handles more than 100 matters in a year, she has garnered extensive experience confronting a wide range of complex challenges that can arise in a claim, including simple matters and seven-figure catastrophic claims alike.

Lisa understands the impact a claim can have on her clients' bottom line, especially if it is not resolved quickly, and she works to provide cost-effective solutions – whether representing a Fortune 100 company or a small business that a workers' compensation claim could bankrupt. She has represented a diverse range of clients, including insurers, school systems, hotels and hotel groups, furniture leasing companies, restaurant groups, manufacturers, food processing companies, municipalities and more. She currently is the lead defense counsel for the City of Atlanta's workers' compensation matters.

In addition to her workers' compensation practice, Lisa also has represented clients in general insurance defense litigation. She has handled matters involving premises liability, automobile accidents and uninsured motorist defense litigation, products liability, slip-and-falls, coverage issues and property damage cases.

In her almost 30 years of counseling clients across a broad spectrum of industries, Lisa has become deeply familiar with the specific business needs, job duties and types of injuries that are unique to individual businesses. She provides legal counsel based on her clients' individual needs and objectives to ensure efficient resolution when negotiating a settlement or litigating a claim.

In addition to her deep experience that provides an extensive understanding of clients' businesses, Lisa serves as a trusted partner with her clients by ensuring close communications to establish valued personal and professional relationships. Her focus on client service ensures she fully understands clients' needs and goals, and her extensive background handling every type of challenge in a workers' compensation claim allows her to meet those goals. Lisa regularly provides training to her clients to keep them abreast of recent changes in the law and to respond to any issues her clients may have or experience in their cases.

Lisa is an established leader in workers' compensation law. She formerly was the state liaison for the Defense Research Institute's (DRI) Workers' Compensation Committee and chair of the Outreach Subcommittee of the Diversity Committee. She is also a past chairperson for the Board of Zoning Adjustment for the City of Atlanta and the Workers' Compensation Section of the State Bar of Georgia. She served five terms on the Fee Arbitration Committee of the State Bar of Georgia, and was the legal adviser to the Atlanta Board of Education's Civil Service Commission, as well as a hearing officer for cases involving the termination of certificated employees.

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The Ultimate Question: Why Is Humpty Dumpty Sitting on That Wall?

In Georgia, idiopathic accidents are frequently accepted as compensable work-related injuries. Prior to the Court of Appeals decision in *Cartersville City Schools v. Johnson*, the Georgia courts often deferred to the analysis of the Appellate Division on whether an injury was idiopathic or not.[1] Though the *Johnson* decision provides a clearer framework under which to analyze idiopathic injuries, it nevertheless muddies the waters in applying the framework to prior case law.

To fully understand this complex area of law, we must first define "idiopathic accident or injury." An idiopathic injury occurs when the cause of the accident and injury is due to a physical or mental condition personal to the employee, with no relationship to a workplace risk or hazard.[2] However, in Georgia, an idiopathic injury also includes unexplained accidents.[3]

The classic example involves an employee falling down for an unknown reason while walking at work. In 1941, the Supreme Court of Georgia, in examining the statutory definition of "injury" under the Workers' Compensation Act, articulated the rule of law that injuries are not compensable where they arise in the course of employment, but are due to risks the employee is equally exposed to outside of work.[1] It is important to note at the outset that *Johnson* fundamentally alters this understanding of idiopathic injuries. The modern day understanding instead focuses on whether the injury arises out of the employment. Special consideration is given to whether the injury is caused by a risk to which the employee is equally exposed to outside of work.

Although Georgia courts have continually revised the understanding of idiopathic injuries, the Georgia Legislature has never actually weighed in on this judicially created defense. Before we analyze the current understanding of idiopathic injuries in depth, as outlined in *Johnson*, we will briefly highlight key court decisions that laid the foundation for the *Johnson* decision.

AN IDIOPATHIC INJURY: A JUDICIAL CREATION

As mentioned, the Supreme Court of Georgia stated injuries are not compensable when they arise in the course of employment for risks the employee is equally exposed to outside of work.[4] In *Fried v. U.S. Fidelity*, the decedent was a business owner who died due to an altercation occurring while he was trying to collect a debt owed by a customer. The Supreme Court of Georgia found the claim not compensable because it determined the "causative danger" in attempting to collect the debt as outside the scope of the employee's job duties and a result of the willful act of a third party.

The Court of Appeals first defined and utilized the term "idiopathic condition" in 1947. In *U.S. Casualty Co. v. Richardson*,[5] the court cited to other states that found workers' compensation claims not compensable where the employee was injured in a fall due to a condition personal to the worker.[6] However, the court also made the distinction between an idiopathic fall to the ground and a fall onto company machinery or a peculiar condition presented by the employment. By way of example, the court cited to an employee falling into an ash pit that was a part of his workplace and being burned to death.[7] In *Richardson*, the court held the claim was compensable both because the employee struck a work table *and* because his fall was caused by overexertion due to the work conditions.[8]

In contrast, the court held in *Borden Foods v. Dorsey* that a claim was not compensable when the employee was injured when she fell to the floor while walking through her place of work without coming into contact

1 345 Ga. App. 290, 812 S.E.2d 605 (2018).
2 Rothstein, 2 Employment Law (1999), § 6.18 at 69.
3 Kissiah, Georgia Workers' Compensation Law, § 5-06.
4 *Fried et al. v. U.S. Fid. & Guar. Co. et al.*, 192 Ga. 492, 15 S.E.2d 704 (1941).
5 75 Ga. App. 496, 43 S.E.2d 793 (1947).
6 *Id.* at 499-500, 796-99.
7 *Id.* at 500, 799.
8 *Id.*

with any other object.[9] In contrast to *Richardson*, the employee in *Dorsey* did not come into contact with a workplace object (e.g., the table in *Richardson*) and her workplace conditions did not otherwise contribute to the fall.

The court then reaffirmed the *Dorsey* decision in *Prudential Bank v. Moore* which dealt with an employee's claim for compensation after she fainted at work and hit her head on the floorboard.[10] Though the employee attempted to differentiate between the floor and floorboard by asserting that the floorboard was a specific danger of the workplace, the court rejected this argument. As the court stated, the employee's attempt to characterize the floorboard as an "object in the work environment" separate from the floor was a "distinction without a difference."[11]

In 2002, the Court of Appeals of Georgia essentially eliminated the concept of idiopathic injuries. In *Johnson v. Publix Supermarkets et al.*, a cashier fell while hurrying down an aisle, fracturing her leg.[12] She did not trip over anything and she only hit the floor when she fell. After the Board found the claim compensable because of the natural slipperiness of the terrazzo flooring, the Superior Court of Houston County reversed, finding the employee's injuries were nothing more than the result of "an idiopathic fall, which by definition did not arise out of [her] employment."[13] The Court of Appeals found the claim compensable. The court determined the injury arose from the employee's work "based simply on the fact that [she] was hurrying to do her job when she fell."[14] The Court of Appeals held the previous case law creating an idiopathic injury defense had been overturned in favor of the "positional risk doctrine."[15]

Two years later, the Court of Appeals disapproved its *Johnson v. Publix* decision in *Chaparral Boats v. Heath*.[16] This case involved an employee who hyper-extended her left knee while walking across the employer's premises to clock in for work. The employee was walking faster than normal because she was almost late for work when she felt a popping pain in her knee. She stopped briefly, then resumed walking with a limp. She did not trip, slip, fall or strike any object. The *Chaparral Boats* court explained the doctrine to mean a compensable accidental injury arises out of employment when the employee proves her work brought her within range of the danger by requiring her presence in the locale when the peril struck, even though any other person present would have also been injured irrespective of her employment. Thus, increased risk need not be proven only where positional risk, as properly defined, established the necessary proximate causation between an injury and the employment.

Continuing to grapple with the legal ramifications of the term "arising out of the course of employment," in 2009, the Court of Appeals of Georgia considered *Harris v. Peach County*, in which a custodian injured her left knee when she bent down to pick up a pill that belonged to her off the floor.[17] The employee argued and provided testimony from her supervisor that it was her duty as custodian to remove a foreign object from the floor, regardless of whether the object was her own. The court found the co-morbidity of the employee's obesity irrelevant for purposes of analyzing the idiopathic injury defense. Instead, the court found the claim compensable, emphasizing the fact the employee was performing her work duties at the time of the accident and declared this fact to be a determinant when analyzing idiopathic injuries.

Less than a year later, the Court of Appeals in *St. Joseph's Hospital v. Ward* reviewed a case in which a nurse twisted her knee when she turned to give a patient some water to take his medication.[18] Again, the employee did not fall or hit her knee on an object in her workplace. The employer successfully argued the employee failed to carry her burden of proof under *Chaparral Boats*. The court agreed and found the employee was not exposed to any risk unique to her employment by standing and turning.[19] The claim was not compensable.

9 112 Ga. App. 838, 146 S.E.2d 532 (1965).
10 219 Ga. App. 847, 467 S.E.2d 7 (1996).
11 *Id.* at 847.
12 256 Ga. App. 540, 568 S.E.2d 827 (2002).
13 *Id*. at 541, 828.
14 *Id*. at 543, 830.
15 *Id*. at 541.
16 269 Ga. App. 339, 606 S.E.2d 567 (2004).
17 296 Ga. App. 225, 674 S.E.2c 36 (2009).
18 300 Ga. App. 845, 686 S.E.2d 443 (2009).
19 *Id.* at 848, 446.

Although the decision effectively limited the *Harris v. Peach County* decision, the court noted this result was harmonious with its decision in *Harris v. Peach County.* In both decisions, the Court of Appeals deferred to the Appellate Division's findings and the evidence in support of such findings. According to the court, any statements in *Harris v. Peach County* that could be construed to conflict with *Chaparral Boats v. Heath* are nonbinding dicta.

In 2014, the decision in *Ward* was upheld in the newest idiopathic case of *Chambers v. Monroe County Board of Commissioners.*[20] In *Chambers*, the employee was a firefighter/EMT who was sitting at her desk completing paperwork and watching television. Her supervisor asked her to stand up so he could use her desk. As she stood, she felt and heard a pop in her left knee. She ultimately underwent knee surgery. The administrative law judge (ALJ) found the claim compensable under a theory akin to the positional risk doctrine: the employee was required to be in the location where she was injured and was following her supervisor's orders. The Appellate Division employed an increased risk analysis and vacated the ALJ's award. The Appellate Division found "no evidence the employee slipped, tripped, fell or came in contact with any object or hazard that increased her risk of injury." To the contrary, she simply rose from a seated position. The Superior Court and Court of Appeals agreed. In its holding, the Court of Appeals emphasized it was upholding the rule of law as originally cited in the *Chaparral Boats* court.

REVERSING COURSE: WHERE DO WE STAND?

Though there appeared to be some clarity and consistency with the decisions in *Ward* and *Chambers*, the Court of Appeals reversed track in 2018 with its holding in *Cartersville City Schools v. Johnson.*[21] In this case the employee, a teacher at Cartersville Elementary School, walked to her desk to put an image on the smartboard and suffered an injury to her knee when she turned and began to walk to the front of the classroom. The Court of Appeals accepted the finding of fact most favorable to the employer, as the party that prevailed before the Appellate Division of the State Board. The ALJ initially found the injury compensable, arguing that the employee's work as a teacher required her to navigate swiftly around the classroom desks. In turn, the ALJ argued the movement caused the employee to place an acute stress on her knee that resulted in injury. The Appellate Division reversed the ALJ's holding, reasoning that the act of turning and walking was not a "risk unique to [the employee's] work and [was] a risk to which [the employee] would have been equally exposed apart from her employment."[22] The Superior Court then reversed the Appellate Division's holding based on a two-fold argument: (1) the Superior Court substituted its own fact-finding to conclude there was no evidence to support the fall was idiopathic in nature, and (2) the Superior Court argued the Appellate Division's "unique risk" holding "would label any [work] injury that [could also occur] off-site as 'idiopathic.'"[23]

The Court of Appeals noted the key question in determining whether an injury was idiopathic (and hence not compensable) or work related (and hence compensable) was whether the injury arises out of employment. In answering this question, the Court of Appeals reiterated with approval the *Chaparral Boats* standard:

> For an accidental injury to arise out of the employment there must be some causal connection between the conditions under which the employee worked and the injury which [she] received. The causative danger must be incidental to the character of the employment, and not independent of the relation of master and servant. The accident must be one resulting from a risk reasonably incident to the employment. And a risk is incident to the employment when it belongs to, or is connected with, what a workman has to do in fulfilling his contract of service. An injury arises out of the employment when a reasonable person, after considering the circumstances of the employment, would perceive a causal connection between the conditions under which the employee must work and the resulting injury.[24]

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[20] 328 Ga. App. 403, 762 S.E.2d 133 (2014).

[21] 345 Ga. App. 290, 812 S.E.2d 605 (2018).

[22] *Cartersville City Schools v. Johnson*, 239 Ga. App. 290, 292, 812 S.E.2d 605, 607.

[23] *Id.* at 293, 608.

[24] *Id.* at 294-95, 609-10 (citing *Chaparral Boats, Inc. et. al. v. Heath*, 269 Ga. App. 339, 340-41, 606 S.E.2d 567, 568-569).

In Georgia, the idiopathic defense remains firmly grounded in *Chaparral Boats* and its progeny. The standard therefore remains:

> Where the injury would have occurred regardless of where the employee was required to be located and results from a risk to which the employee would have been equally exposed apart from any condition of the employment, there is no basis for finding a causal connection between the employment and the injury and no basis for compensation under the positional risk doctrine. The general rule still applies that the injury does not arise out of the employment where the causative danger is not "peculiar to the work" in a way that causally connects the employment to the injury.

The Court of Appeals also reaffirmed that the key question ("whether the [employee] performed the activity [that ultimately led to her injuries] in furtherance of her job duties") in resolving an idiopathic injury defense is a question of fact committed to the factfinder at the administrative level.

However, the Court of Appeals ruled that both the Superior Court and the Court of Appeals would be responsible for defining the legal framework under which the facts were applied. Here, the legal framework required the court to define what "arising out of" employment meant when an employer asserted the idiopathic injury defense: whether the employment was the proximate cause of the accident *and* whether the injury occurred due to a hazard to which the employee would have been equally exposed outside of the employment.[25]

In answering the question of whether the employee performed the activity that led to her job injuries in furtherance of her job duties, the Court of Appeals concluded that the Appellate Division incorrectly focused on solely whether the hazard was one that the employee would be exposed to outside of her employment. The Court of Appeals focused closely on whether the employment was the proximate cause of the accident. For the employment to be the proximate cause of the accident, the employee must be engaged in an activity they regularly perform as a part of their job *or* exposed to some "special danger of the employment."[26]

For better or worse, the *Cartersville* decision has provided us a framework under which to analyze idiopathic injuries. Notably, the *Cartersville* court held that *Chaparral Boats* correctly concluded that an injury suffered while an employee was walking across company property to clock in did not arise out of the employee's work, nor was it an otherwise "special danger of the employment." However, the *Cartersville* decision also noted that a court should not take the mere fact that an injury was suffered while the employee engaged in an activity common outside the work context (e.g., walking, bending, climbing) as the deciding factor in idiopathic defense cases. In contrast, compare the employee in *Harris v. Peach County*, whose job as a custodian required her to bend over and pick up trash she found. Although bending over is an activity frequently performed outside of the work context, because she performed this activity as a function of her job duties, the employee's work injury was compensable. Furthermore, the employee's job injury was compensable irrespective of the comorbidities that heightened the risk of injury (i.e., the "eggshell plaintiff" rule applies even in the idiopathic injury context).

There remain certain unresolved anomalies from the *Cartersville* decision. For example, it is unclear why the court does not consider the act of clocking in as arising out of employment in idiopathic defense claims, but does consider the act of clocking in as a part of employment in certain "ingress/egress" rule decisions. However, the takeaway should be that the courts will ultimately defer to the State Board so long as they include in their analysis a proximate cause analysis and an analysis of whether the hazard is one to which the employee is equally exposed outside of the employment. For our purposes, an idiopathic defense remains unreliable unless it can conform to a classic idiopathic case, such as a case of falling down and striking the floor for an unknown cause. In other cases, we can often supplement the facts of the defense via medical evidence.

Consider an employee who treks up and down the stairs as a part of her job. One day while making the trek, the employee places her foot on the stairs and hears a sudden pop in her knee. Answering whether this is an idiopathic injury or caused by the employment is fact specific. Did a doctor opine the employee's walking up and down the stairs caused a gradual degeneration of her knee, causing the pop? Did stepping at that very moment on that particular surface cause the pop? Or, did a doctor opine the employee's knee popped for

[25] *Id.* at 296, 611 (citing *Fried v. U.S. Fidelity & Guar. Co.*, 192 Ga. 492, 15 S.E.2d 204 (1941)).
[26] *Id.* at 297, 612.

a purely personal reason and the stairs had no impact on the likelihood of her knee to pop at that particular moment? In answering these questions and building an idiopathic injury defense, a fact-heavy investigation is necessary. Unfortunately, the still-muddled nature of the court's analysis does not allow us to provide an easy to follow chart outlining what steps to take as asserting this defense varies based on the unique facts of each circumstance, save for those few cases that fall in the "classic" example of an employee falling from an unknown cause and only hitting the floor.

Put simply, you must ask: Why is Humpty Dumpty sitting on that wall? Is he sitting there because he was required to do so for work? In Humpty Dumpty's world, do people frequently sit on walls outside of work? Note that we would not care that Humpty Dumpty is the prototypical eggshell plaintiff in answering whether his fall was a compensable work injury. Instead, we would examine all the surrounding circumstances of Humpty Dumpty's fall to determine whether there is a work-related explanation for the cause of the accident that takes the case out of the idiopathic exception for a compensable claim.

What Was in That Apple? The Evolving Landscape of Cannabis Legalization and Its Impact on Workers' Compensation Claims

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Joanna's deep understanding of workers' compensation matters allows her to adeptly navigate all the nuances of each case. She provides clients with specialized service and focused attention to the minute details that form a workers' compensation dispute, including intentional preparation for appeals or the other next steps that may arise after a matter is resolved.

Joanna understands the importance of getting out ahead of a problem and helping her clients have strong defenses in place before an accident occurs. She does this through client seminars, informational materials and one-on-one consultations.

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Prior to joining Swift Currie, Joanna worked as a staff attorney to the Honorable Chief Judge Albert B. Collier of Georgia. While in law school, she interned with the Honorable Judge Eugene Verin, the HealthSouth Corporation and the Georgia Department of Education. She also served as the senior associate editor for The American Journal of Trial Advocacy, which is published by the Cumberland School of Law at Samford University, Joanna's alma mater.

What Was in That Apple? The Evolving Landscape of Cannabis Legalization and Its Impact on Workers' Compensation Law

Marijuana is currently experiencing a heyday as public perception has started to shift and many governmental entities are relaxing the proscription against its use. Undoubtedly, a large factor in this increased popularity is due to a rise in awareness regarding marijuana's use as a medical treatment for physiological or psychological conditions. Currently, most states have legalized some aspect of cannabis use.[1] In light of this backdrop, workers' compensation practitioners and risk management professionals can certainly expect to be confronted with various issues involving marijuana and its implications on workers' compensation claims.

WHAT DO WE MEAN BY "MEDICAL MARIJUANA"?

Before we can fully appreciate how medical marijuana is affecting, and may in the future affect, the landscape of workers' compensation claims, we must set out some parameters and definitions for what we mean by "medical marijuana." The broadest term, encompassing marijuana and its various permutations, is "cannabis," which is the large genus of plants indigenous to Central Asia and the Indian subcontinent.[2] Within marijuana plants, cannabinoids are produced. These are chemicals within the plant that can influence cell receptors in the brain and body.[3]

While there are vast numbers of cannabinoids, the two we primarily need to know for this discussion are tetrahydrocannabinol (THC) and cannabidiol (CBD).[4] THC is a psychoactive cannabinoid, meaning its effects are primarily felt in the brain function and in an alteration of perception. In layman's terms, THC is generally the cannabinoid that gets one "high." By contrast, CBD is nonpsychoactive and actually acts as an antagonist to THC because it can mitigate the psychoactive effects of THC.[5] In general, when we are discussing medical marijuana, we are referring to a substance primarily comprised of CBD, with a low level of THC.

RECENT LEGISLATIVE AND POLICY CHANGES NATIONWIDE

Presently, a total of 36 states, as well as D.C., Guam, Puerto Rico and the U.S. Virgin Islands, have approved some version of a comprehensive, publicly available medical marijuana and/or cannabis program.[6] An additional 11 states place strict limitations on the amount of THC and generally only allow the legal use of CBD with a low THC content.[7] In recent years, there has been a snowball effect of states either legalizing or decriminalizing cannabis usage. Almost half of the U.S. (about 43% of the population) now lives in a state where marijuana is legal to consume recreationally. In 2000, only 31% of Americans supported legalization of marijuana. By the year 2020, 68% of Americans supported legalization.[8]

In 2009, the Obama administration issued a memo to federal prosecutors not to focus federal resources on prosecuting marijuana crimes in states with regulatory schemes in place.[9] In 2013, this was strengthened by the Cole Memorandum, which instructed federal prosecutors to limit intervention in states with legalized marijuana.[10] However, in 2018, then Attorney General Jeff Sessions officially rescinded the Cole Memorandum.

1 Keith Speights, *Timeline for Marijuana Legalization in the United States: How the Dominoes Are Falling*, The Motley Fool, https://www.fool.com/investing/timeline-for-marijuana-legalization-in-the-united.aspx.

2 National Environmental Health Association, *Cannabis 101: Glossary of Related Terms*, https://www.neha.org/sites/default/files/eh-topics/food-safety/Cannabis-101-Glossary-Related-Terms.pdf.

3 *Id*.

4 *Id.*

5 *Id.*

6 National Conference of State Legislatures. *State Medical Marijuana Laws.* https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx.

7 *Id*.

8 Gallup Poll. https://news.gallup.com/poll/1657/illegal-drugs.aspx.

9 Speights*, supra.*

10 *Id*.

Since then, there have been two primary pieces of legislation that have been put forth regarding marijuana distribution and usage. In 2019, the House passed the Secure and Fair Enforcement Act (SAFE Act) to protect banking and lending institutions that offered loans to dispensaries.[11] However, the bill stalled in the Senate. Also in 2019, the House Judiciary Committee approved the Marijuana Opportunity Reinvestment and Expungement Act, which sought to decriminalize marijuana at a federal level.[12] Despite most states having some form of medical marijuana law in place, the Drug Enforcement Administration (DEA) still classifies marijuana as a Schedule I drug, which it defines as "drugs with no currently accepted medical use and a high potential for abuse."[13]

RECENT LEGISLATIVE CHANGES IN GEORGIA

In 2015, Haleigh's Hope was enacted in Georgia. This provided for a very limited use of low-THC oil for a limited number of purposes. It also created a registry for patients who needed low-THC oil.[14] However, the Act created a bit of a quandary regarding implementation, as it did not provide for any way to cultivate, process or distribute the oil.[15] As transporting the oil across state lines is still a federal crime, this effectively curtailed any legal way for affected individuals to obtain CBD oil.

To address this legal discord, two additional pieces of legislation were codified in Georgia in 2019. The first was the Georgia Hemp Farming Act, which was signed into law on May 10, 2019.[16] This bill authorized the research, production, processing and regulation of industrial hemp in Georgia.[17] Significantly, under the terms of the Georgia Hemp Farming Act, hemp growers must apply for and be granted an annual license through the state.[18]

The second act of legislation in 2019 was House Bill 324, Georgia's Hope Act.[19] This Act created the Georgia Access to Medical Cannabis Commission, which was tasked with addressing the logistics of buying, selling and distributing medical cannabis in Georgia. Further, it expanded some of the conditions deemed appropriate for medical cannabis treatment.[20] From a workers' compensation context, some of the significant expansions included treatment for peripheral neuropathy, intractable pain and post-traumatic stress disorder (PTSD).[21] The Georgia Access to Medical Cannabis Commission had its first meeting in December 2019 and has begun the task of exploring how to distribute the drug to the state's nearly 14,000 registered patients.[22] At the time this paper was written, the commission has not yet accepted applications for dispensaries.[23]

EMPLOYER DEFENSES TO EMPLOYEE MARIJUANA USAGE

While medical cannabis may be legal to a limited extent in Georgia, an employer is not required to permit an employee to use marijuana. Indeed, Georgia's Hope Act specifically states, "Nothing in this article shall require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, purchase, sale, or growing of marijuana in any form, or to affect the ability of an employer to have a written zero tolerance policy prohibiting the on-duty and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work."[24] Thus, employers are still free to implement their own zero-tolerance policy as it relates to the use of marijuana.

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11 *Id*.
12 *Id*.
13 Drug Enforcement Administration, Drug Scheduling, https://www.dea.gov/drug-scheduling.
14 H.B. 1, 2015-16 Reg. Sess. (Ga. 2015).
15 *Id*.
16 Raynor Churchwell, *Georgia Legalizes Hemp Farming*, Georgia Farm Bureau Magazine, https://www.gfb.org/media-and-publications/gfb-news-magazine.cms/post/59/Georgia%20legalizes%20hemp%20farming.
17 *Id*.
18 *Id*.
19 H.B. 324, 2019-20 Reg. Sess. (Ga. 2019).
20 *Id.*
21 *Id*.
22 Mark Niesse, *Board Launches Effort to Deliver Medical Marijuana to Georgia Patients*, Atlanta Journal Constitution (Dec. 18, 2019), https://www.ajc.com/news/state--regional-govt--politics/board-launches-effort-deliver-medical-marijuana-georgia-patients/q9lpo5XQgi7onYKySdA3mI/.
23 *See generally* Georgia Access to Medical Cannabis Commission. https://www.gmcc.ga.gov/.
24 H.B. 324, *supra*.

Though Georgia courts have not taken up this issue yet, the Colorado Supreme Court held an employer was within its legal rights to terminate an employee for off-duty marijuana usage. The terminated employee had received a marijuana license from the state for use in treating muscle spasms caused by paraplegia. The lawsuit was filed under Colorado's "lawful activities statute," which prohibits employee discharge for engagement in "lawful activities" while off duty. Nonetheless, the Colorado Supreme Court found that because marijuana usage is still illegal on a federal level, his use of marijuana would not be considered "lawful" and would therefore not be protected under the state statute.[25]

However, if an employee is legally prescribed medical marijuana and is injured in the course and scope of employment, the employer may not be able to establish a defense to the claim based on the claimant's ingestion of marijuana. O.C.G.A. § 34-9-17(b) provides, "No compensation shall be allowed for an injury or death due to intoxication by alcohol or being under the influence of marijuana or a controlled substance, *except as may have been lawfully prescribed by a physician for such employee and taken in accordance with such prescription.*[26] While in the past, an employee testing positive for marijuana would have created a rebuttable presumption that his injury was caused by intoxication and is therefore not compensable. However, as patients in Georgia become able to access marijuana legally and by prescription, this defense may be somewhat curtailed in the future. [27]

MEDICAL MARIJUANA USAGE BY INJURED WORKERS WITHIN THE CONTEXT OF A WORKERS' COMP CLAIM

Once we have a workers' compensation claim with an injured worker who is receiving benefits, what are the implications of the evolving legislation nationwide and in Georgia on how we handle these claims? Though the evidence is still emerging and is quite new, there do appear to be some positive and cost-saving implications for use of medical marijuana to treat work-related injuries. For example, a 2016 study in *Health Affairs* used data on prescriptions filled by Medicare Part D enrollees from 2010-2013, and found total spending for Medicare Part D would have been $468.1 million less in the year 2013 had all states adopted medical marijuana laws.[28] This would have represented approximately 0.5% of Medicare Part D spending from that year.[29]

Perhaps more compelling is a study published in 2020 in *Health Economics* in which researchers found the accessibility of cannabis was related to a 6.7% decline in workers' compensation claims.[30] Further, the claims brought lasted a shorter period of time after medical marijuana was legalized.[31] The overall dollar amount of the claims also decreased by 0.8%.[32] While both the Medicare study and the workers' compensation study show fairly modest benefits in terms of the total amount typically spent, the results do appear promising.

At this point, we must ask ourselves what we are to do in a situation where an injured worker is prescribed medical marijuana for a work-related injury. On one hand, the preliminary studies appear to suggest this could be a way to shorten the duration of a claim and reduce overall costs. However, as cannabis is still a Schedule I drug federally, there are considerations other than the potential for a face-value cost savings.

Georgia courts have not taken up this issue, nor are they likely to do so until the Access to Medical Cannabis Commission sets out the procedures for medical marijuana patients to obtain cannabis from licensed pharmacies or dispensaries. Other states have, however, had this very issue arise and the jurisdictions are split as to how this should be handled. In Arizona, the state legislature enacted an amendment to its original medical marijuana legislation, which specifically provides nothing in the act would require a workers' compensation carrier or self-insured employer to reimburse an injured worker for the costs of medical marijuana for a work

25 Kathryn J. Russo, *Colorado Supreme Court: Medical Use of Marijuana Not 'Lawful,'* Jackson Lewis (June 17, 2015), https://www.jacksonlewis.com/resources-publication/colorado-supreme-court-medical-use-marijuana-not-lawful.

26 O.C.G.A. § 34-9-17, *emphasis added*.

27 *Id*.

28 Ashley C. Bradford and W. David Bradford, *Medical Marijuana Laws Reduce Prescription Medication Use In Medicare Part D*, Health Affairs (July 2016), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.1661.

29 *Id*.

30 Linda Carroll, *Access to Medical Marijuana Tied to Reduced Workers' Comp Claims*, Reuters (Jan. 2, 2018), https://www.reuters.com/article/us-health-cannabis-workers-comp/access-to-medical-marijuana-tied-to-reduced-workers-comp-claims-idUSKBN2012MY.

31 *Id*.

32 *Id.*

injury.[33] By contrast, courts in New Mexico and New Jersey have ordered insurers/employers to reimburse an injured worker for the cost of medical marijuana.[34] In October 2020, the Massachusetts high court held that employees who use medical marijuana as a course of treatment for a work-related injury cannot be reimbursed for it through workers' compensation. The court explained, "It is one thing to voluntarily assume a risk of federal prosecution . . . it is another to involuntarily have such a risk imposed upon you."[35] In New Hampshire, the Supreme Court ruled the state medical marijuana statute did not create a right to reimbursement, but it also did not bar an employer or insurer from providing reimbursement.[36] Thus, based on the decisions from other districts, without a test case, we cannot reliably predict how Georgia courts will eventually decide the responsibility or ability of an employer/insurer in providing medical marijuana to injured workers.

BEST PRACTICES AND TAKEAWAYS

As we navigate unchartered territories, we do not know exactly what implementation of Georgia's medical marijuana laws will look like, nor do we know how the courts may address the issue of medical marijuana in the context of workers' compensation claims. Therefore, we must gird ourselves for a number of eventualities. Based upon the employer-friendly language of Georgia's Hope Act, we want to ensure we have a written zero-tolerance drug policy in place. Further, while Georgia's medical marijuana law may have chipped away somewhat at the general defense of O.C.G.A. § 34-9-17, we still want to ensure we have a strong drug screening policy in place following an accident to document the presence of any illicit substances in the employee's system at the time of an accident. Finally, and most importantly, keep apprised of evolving policy and legislative changes, as well as the decisions coming out of other districts.

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33 Tammy Odierna, *Arizona Passes Work Comp Legislation for Medical Marijuana*, myMatrixx (Apr. 13, 2015), https://www.mymatrixx.com/arizona-passes-work-comp-legislation-for-medical-marijuana/.

34 *New Mexico Court Again Rules for Worker in Medical Marijuana Case*, Insurance Business (July 24, 2015), https://www.insurancebusinessmag.com/us/news/breaking-news/new-mexico-court-again-rules-for-worker-in-medical-marijuana-case-24740.aspx; Danielle Jaffee, *How Medical Marijuana is Impacting Workers' Comp*, Injured Workers' Pharmacy (Sept. 24, 2019), https://www.iwpharmacy.com/blog/how-medical-marijuana-is-impacting-workers-comp.

35 *Wright v. Central Mutual Insurance Co.*, SJC – 12873.

36 *New Hampshire High Court Rules Board Wrong to Deny Workers' Comp for Medical Pot*, Insurance Journal (Mar. 8, 2019), https://www.insurancejournal.com/news/east/2019/03/08/520020.htm.

A Whole New World: 2020-2021 Case Law Update

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Thea A. Nanton-Persaud is a senior attorney in Swift Currie's workers' compensation practice. She has experience with all aspects of workers' compensation defense and represents employers and workers' compensation insurance companies throughout the state of Georgia, including experience resolving high-dollar, catastrophic claims.

She prides herself on paying close attention to her clients' goals and is driven to get the best results for everyone she represents. Her approach is firm yet fair, which enables her to get the outcomes clients want while garnering the respect of her opponents and judges alike.

She is also registered with the Georgia Commission on Dispute Resolution, which allows her to conduct mediations. Her training as a mediator provides her with unique insight into considering both sides of a claim and allows her to develop creative solutions for claim resolution.

Thea shares her knowledge not only with her clients, but with the community as well. She regularly speaks at educational seminars to provide information on workers' compensation law.

When she is not meeting the needs of her clients, Thea spends time nurturing the next generation of lawyers through mentoring students at Georgia State University College of Law. She is also involved in the mentorship programs at Gate City Bar Association and the Georgia Association of Black Women Attorneys. In addition, Thea serves as a judge for high school mock trial competitions and has been a coach for the Young Lawyers' Division High School Mock Trial Competition.

A Whole New World: 2020-2021 Case Law Update

EXCLUSIVE REMEDY APPLICATION REGARDING TEMPORARY EMPLOYEES

***Sprowson v. Villalobos*, A19A2279 Ga. Ct. App. (March 31, 2020).**

Sprowson involved the application of the exclusive remedy doctrine to a temporary employee filing a civil suit against an employer who contracted with a temp agency, for whom the temporary employee was directly employed, as well as a civil suit against an employee of that same employer.

The plaintiff was employed directly by Labor Ready. Waste Pro contracted with Labor Ready to provide temporary employees. The plaintiff was assigned to work for Waste Pro in this regard. The plaintiff sustained an on-the-job injury while working for Waste Pro through Labor Ready. A workers' compensation claim was filed against Labor Ready as the direct employer, and the claim was accepted as compensable.

The plaintiff then filed a lawsuit against Waste Pro and one of their direct employees, Nelson Sprowson. The plaintiff alleged the injury was caused directly by Sprowson's negligence. The trial court granted summary judgment to Waste Pro, finding that any claim against it was barred by the exclusive remedy doctrine. However, the trial court ruled the exclusive remedy under O.C.G.A. § 34-9-11 did not bar the plaintiff from bringing a tort claim against defendant Sprowson. Sprowson appealed this ruling. The Court of Appeals reversed the trial court and held the claim against Sprowson was also barred by the exclusive remedy doctrine.

O.C.G.A. § 34-9-11 (a) provides, in pertinent part:

> The rights and the remedies granted to an employee by this chapter shall exclude and be in place of all other rights and remedies of such employee . . . and all other civil liabilities whatsoever at common law or otherwise, on account of such injury, loss of service, or death . . . . No employee shall be deprived of any right to bring an action against any third-party tort-feasor, other than an employee of the same employer or any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits.

The court held, pursuant to its prior ruling in *Underwood v. Burt*, Sprowson was considered "an employee of the same employer" as the defendant and could not be held liable in tort.[1] In *Underwood*, the court concluded that "[a] borrowed servant is, then, even though temporarily, 'an employee of the same employer' of any regular employee of the borrowing employer."[2]

In discussing whether the plaintiff would be considered a borrowed servant, the court discussed its prior case law on the subject in detail. In order for an employee to be a borrowed servant, "[t]he evidence must show that (1) the special master had complete control and direction of the servant for the occasion; (2) the general master had no such control; and (3) the special master had the exclusive right to discharge the servant."[3] "All three prongs of the test must focus on the occasion when the injury occurred rather than the work relationship in general."[4] With regard to the third prong of the test, the Supreme Court of Georgia has equated a special master's ability to "unilaterally discharge" a temporary employee with "the exclusive right to discharge" a servant.[5]

In reviewing the evidence in the instant matter, the court determined all three prongs of the test in *Underwood* had been established, as the contract between Labor Ready and Waste Pro provided Waste Pro was solely responsible for supervising and training. Further, despite the fact Labor Ready had the right to hire and terminate, their contract provided Labor Ready "shall not assign to and shall remove from the performance of the Services any employee, person or party who in its opinion or in the opinion of [Waste Pro

1 *Underwood v. Burt*, 185 Ga. App. 381, 364 S.E.2d 100 (1987).
2 *Id*. at 382 (applying borrowed servant analysis to determine application of O.C.G.A. § 34-9-11(a)).
3 *Stephens v. Oates*, 189 Ga. App. 6, 7(1), 374 S.E.2d 821 (1988).
4 *Preston v. Ga. Power Co.*, 227 Ga. App. 449, 451(1), 489 S.E.2D 573 (1997).
5 *Six Flags Over Ga. v. Hill*, 247 Ga. 375, 378(1), 276 S.E.2d 572 (1981).

USA] fails to meet reasonable standards of experience, competency or comportment, or who by virtue of their behavior are or become a detriment to acceptable successful performance of the Services. [Labor Ready] shall ensure such person or party remains uninvolved with the Services." Finally, the plaintiff had conceded he understood Waste Pro could send him away if they did not like the work he was doing and he was required to do whatever they told him to do on the job.

Based on this analysis, the court concluded the plaintiff fell within the definition of a borrowed servant and was therefore "an employee of the same employer" pursuant to O.C.G.A. § 34-9-11(a). As such, the exclusive remedy protections applied to Sprowson, and the tort action against him was barred.

STATUTORY EMPLOYERS

***Mullinax v. Pilgrim's Pride Corp.*, A19A1899, A19A1900, A19A1901 Ga. Ct. App. (March 9, 2020).**

Mullinax involved a wrongful death action brought by the decedent's widow against multiple entities. The decedent was a truck driver employed directly by Mountain Milk Hauling, Inc. Mountain Milk was one of multiple entities contracted by Pilgrim's Pride in furtherance of their operation to grow and process chickens for sale. They were responsible for transporting the chickens from various farms to designated locations. Garren Benton Hall was the owner of a chicken farm, which raised the chickens Pilgrim's Pride would ultimately sell. Rising, Inc., was the company that contracted to catch and load the chickens for transport.

The accident in question arose after an employee for Rising, Inc., left the key in the ignition to a forklift while he went to use the bathroom. Another employee for Mountain Milk observed the parked forklift and began using it to remove cages and load them onto the decedent's truck. During this series of events, the Mountain Milk employee ran over the decedent and killed him. The decedent's widow filed a workers' compensation claim against Mountain Milk, and tort actions were filed against the other three entities.

Summary judgment was granted by the trial court to Pilgrim's Pride as the statutory employer on the basis of the exclusive remedy doctrine. Summary judgment was also granted to Garren Benton Hall and Rising, Inc. for reasons unrelated to the exclusive remedy under the Workers' Compensation Act.

With regard to Pilgrim's Pride, the Court of Appeals affirmed the grant of summary judgment under the exclusive remedy doctrine, holding Pilgrim's Pride was the decedent's statutory employer. As a preliminary matter, the court addressed the long-standing provisions concerning the exclusive remedy and statutory employer provisions. The exclusive remedy provision of the Workers' Compensation Act reads as follows:

> The rights and the remedies granted to an employee by this chapter shall exclude and be in place of all other rights and remedies of such employee, his or her personal representative, parents, dependents, or next of kin, and all other civil liabilities whatsoever at common law or otherwise, on account of such injury, loss of service, or death[.][6] 'Therefore, where the Act applies, it provides the employee's exclusive remedy against his employer and precludes recovery on a tort claim by an injured employee against his employer.'[7] Relatedly, '[t]he statutory employer provision of the [Workers' Compensation] Act, O.C.G.A. § 34-9-8, makes principal or intermediate contractors secondarily liable for workers' compensation benefits for injured employees of a subcontractor.'[8] 'Thus, so long as [Pilgrim's] was [the decedent's] statutory employer, it would enjoy immunity from a tort claim.'[9]

With regard to whether Pilgrim's Pride should be classified as the decedent's statutory employer, the court held it was a principal contractor under O.C.G.A. § 34-9-8 (a), as "a 'principal contractor' engages subcontractors to assist in the performance of the work or the completion of the project which the 'principal contractor' has undertaken to perform for another."[10] O.C.G.A. § 34-9-8(a) extends "to those who contract to perform certain work, such as the furnishing of goods and services, for another, and then sublet in whole or part such work."[11]

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6 O.C.G.A. § 34-9-11(a).

7 *Teasley v. Freeman*, 305 Ga. App. 1, 2(1), 699 S.E.2d 39 (2010).

8 *Carr v. FedEx Ground Package Sys., Inc.*, 317 Ga. App. 733, 734(2), 733 S.E.2d 1 (2012).

9 *Maguire v. Dominion Dev. Corp.*, 241 Ga. App. 715, 717, 527 S.E.2d 575 (1999).

10 *Yoho v. Ringier of Am., Inc.*, 263 Ga. 338, 342, 434 S.E.2d 57 (1993).

11 *Id*. at 339.

There was no dispute Pilgrim's Pride had contractually retained Mountain Milk to haul chickens in order to fulfill its own contracts with its customers. The court held the fact that Pilgrim's Pride owned the chickens did not preclude it from being a principal contractor under this analysis for purposes of O.C.G.A. § 34-9-8(a).

The second portion of the court's analysis included the record plainly showed that "the injuries to the decedent occurred on Hall's farm, on which Pilgrim's had undertaken to execute work through its subcontractor, Mountain Milk." Further, the statutory employer provision applies "in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under his control or management."[12] Pilgrim's Pride's agreement with Mountain Milk provided that Mountain Milk would furnish all labor and supplies necessary to haul birds to designated locations. Mountain Milk's truck drivers were expected to be "at the farm to haul birds," and the decedent was at Hall's farm to haul birds on the date of the accident.

Hall's farm constituted premises on which Pilgrim's undertook to execute work. As Pilgrim's was a principal contractor under O.C.G.A. § 34-9-8(a) when the decedent's injuries occurred and Hall's farm constituted premises on which Pilgrim's undertook to execute work, Pilgrim's was found to be immune from tort liability.

INDEPENDENT CONTRACTORS VERSUS EMPLOYEES

***Estes v. G&W Carriers, LLC*, A19A2385, A19A2386 Ga. Ct. App. (March 6, 2020).**

In *Estes*, the plaintiff filed a personal injury suit against G&W Carriers, LLC, after she was injured in a motor vehicle accident while in the sleeping compartment of the tractor-trailer being operated by her husband while hauling a load of carpet from Georgia to California. The trial court granted summary judgment, and the plaintiff appealed.

The plaintiff argued the exclusive remedy doctrine does not apply, as she was an independent contractor and not an employee. The court found the plaintiff was in fact an employee and was therefore barred by the exclusive remedy provision of the Workers' Compensation Act.

The court discussed the long-standing Georgia law to be applied in determining whether the relationship of the parties under a contract for the performance of labor is that of employer and servant or employer and independent contractor. It held the issue lies in whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, as distinguished from the right to merely require certain definite results in conformity to the contract.[13] "The existence of this right to control by the employer may be inferred where the person is employed generally to perform certain services for another, and there is no specific contract to do a certain piece of work according to specifications for a stipulated sum."[14]

In looking at the case at hand, the court found the undisputed record evidence showed the defendant hired the plaintiff generally to drive its tractor trailer. The defendant also owned and had DOT authority over the tractor trailer, and when the plaintiff drove, it was under the defendant's DOT authority. It also retained the right to terminate the plaintiff, paid all costs of operating the tractor trailer, was responsible for the maintenance of the tractor trailer and paid for the fuel and inspections of its tractor trailers and its drivers' records. While the plaintiff paid for "scale tickets," the defendant reimbursed them. The defendant was also responsible for assigning loads for hauling to the plaintiff and dispatching the tractor trailer. The plaintiff was not allowed to find her own loads and had no discretion over which loads she hauled. The defendant also arranged the pick-up and delivery times for the loads. Although the plaintiff was not directed to take specific routes, buy fuel from specific locations or to wear uniforms, the defendant could have done so.

In this particular case, the plaintiff and her husband were a driving team. The defendant had the right to designate whether the plaintiff or her husband would drive the first leg of a trip, as long as their hours were in compliance with regulations, and it had the right to direct how they should strap a load. Log books were required to be turned in every week to the defendants. While the plaintiff could refuse a load only if she had "an issue," if she refused a load otherwise, she would not keep her job with the company. The evidence showed the plaintiff had declined a load on one occasion, but the court found this did not make a difference as it did not contradict evidence that drivers could decline loads under limited circumstances.

[12] O.C.G.A. § 34-9-8(d).

[13] *Golosh v. Cherokee Cab Co.*, 226 Ga. 636, 637, 176 S.E.2d 925 (1970).

[14] *Boatright v. Old Dominion Ins. Co.*, 304 Ga. App. 119, 121, 695 S.E.2d 408 (2010).

Based on the above factors and undisputed evidence in the record, the Court of Appeals held summary judgment was appropriate on the issue that the plaintiff was in fact an employee, not an independent contractor, and therefore barred from bringing a tort action under the exclusive remedy doctrine.

NO RIGHT TO CHANGE OF PHYSICIANS WITHOUT ONGOING NEED FOR MEDICAL TREATMENT

***Hartford Casualty Ins. Co. v. Hawkins*, A19A1878, A19A1879 Ga. Ct. App. (Feb. 18, 2020).**

In *Hawkins*, the claimant sustained an on-the-job injury and was authorized to treat with Dr. Eli Finkelstein at Resurgens Orthopedics. The claimant had chosen this provider off a panel of physicians, which was subsequently determined not to have been in place on the date of accident.

The claimant was seen by Dr. Finkelstein on Nov. 6, 2015, complaining of neck, arm, shoulder and lower back pain. MRIs of the cervical spine and shoulder reflected minimal findings, and the claimant was prescribed therapy and placed on light duty work restrictions. She was also referred to Dr. Angelo DiFelice for her shoulder issues. She had ongoing subjective complaints but Dr. DiFelice found no obvious rotator cuff tear on the MRI and continued the claimant on the restrictions Dr. Finkelstein had put in place.

The claimant was thereafter seen by Dr. Eduardo Escorcia for pain management in March 2016. She was given injections and various pain medications. She continued to work through 2016 but felt the workload was causing her shoulder to worsen. At that point, she requested the employer provide her with light duty accommodations. She had a second MRI in February 2017 and was given light duty restrictions by Dr. Escorcia on Feb. 16, 2017. She was terminated on March 6, 2017, for reasons that included her inability to perform her regular duty jobs.

She underwent a functional capacity evaluation (FCE) on May 8, 2017, which cleared her for light duty work, but it was noted she had given a self-limited effort. The evaluator stated that unless an objective medical reason existed precluding a return to work, she should be returned to work. She returned to Dr. DiFelice on May 17, 2017, and he continued her on restrictions despite the inconsistencies in the FCE.

An independent medical evaluation (IME) with Dr. Paul Mefford was performed at the employer/insurer's request on May 25, 2017. Dr. Mefford concluded she was capable of full duty work and no further medical treatment was necessary. Dr. Finkelstein opined on June 28, 2017, that he had no further medical treatment to offer and she could continue pain management. He deferred any finding of disability to Dr. DiFelice. Based on the medical records, the claimant's deposition testimony and some surveillance materials, Dr. DiFelice opined that the claimant's "complaints of pain and disability of her left arm are inconsistent with [her] physical activities as depicted in the video surveillance" footage taken in June 2017 "showing her using her upper left extremity." Dr. DiFelice also noted that the claimant had reached maximum medical improvement (MMI) and would need no further work restrictions as a result of the Oct. 8, 2015, work injury to her neck and left arm, nor was additional medical treatment to her left upper extremity required. The employer/insurer controverted further benefits on Aug. 25, 2017, on the grounds that no further medical care was required. The claimant requested a change of physicians to Dr. Xavier Duralde on Aug. 8, 2017.

On Oct. 11, 2017, the claimant underwent her own IME with Dr. Robert Karsch, who opined no further treatment was needed for the cervical spine. It was his impression that the "left sided neck and trapezius pain is from her posturing for her left shoulder pain" and would improve with further treatment. He noted she could try a topical NSAID and PRP injection and recommended surgical intervention if the PRP injection did not provide relief. Dr. Karsch stated the claimant should be placed on sedentary restrictions.

The claimant requested a hearing seeking ongoing benefits and temporary total disability (TTD) since March 7, 2017, when she was terminated from her job. She requested a change of physician to Dr. Karsch based on his recommended treatment plan.

The administrative law judge (ALJ) found the injuries had resolved as of Aug. 1, 2017, when the treating physicians found her capable of returning to regular duty work with no further medical treatment needed. The ALJ did not find her testimony about her continued pain to be credible based on her observations during the hearing. As such, she found the claimant was entitled to TTD benefits from March 7, 2017, to Aug. 1, 2017.

The request for a change of physician and additional medical treatment was denied. The Appellate Division affirmed in its entirety.

On appeal, the Superior Court reversed the State Board's decision. They found that because the claimant had exercised her right to a change of physician prior to the claim being controverted, she was statutorily entitled to the change of physician, and the State Board denial of this request constituted legal error. Further, the Superior Court found that because the change of physician should have been granted, the Board erred in finding her injuries resolved as of Aug. 1, 2017, because Dr. Karsch assigned continued work restrictions and recommended additional treatment.

On appeal, the Court of Appeals held the Superior Court had failed to apply the "any evidence standard" of review. Based on the medical opinions of Dr. Finkelstein and Dr. DiFelice, there was evidence in the record to support the Board's finding that the work-related injuries had resolved. The Superior Court's reasoning was that if the request for change of physician had been granted, it would not have found the claimant's work-related injuries had resolved. However, the Court of Appeals noted a reviewing Superior Court "is not authorized to disregard competent evidence that it believes is not credible, reweigh the evidence, or resolve conflicting evidence, as these powers are reserved solely for the ALJ and the Board."[15]

In light of the any evidence standard, the factual determination supported by medical evidence that the claimant's injury resolved and she was not in need of further medical treatment was conclusive as a matter of law. Subsequently, the claimant was not entitled to additional medical treatment. As such, the determination of who would be authorized to provide additional medical treatment was moot.

The Court of Appeals cited O.C.G.A. § 34-9-200(a), which requires an employer to furnish the injured employee with medical treatment that "shall be reasonably required and appear likely to effect a cure, give relief, or restore the employee to suitable employment," and further stated O.C.G.A. § 34-9-201 (b)(1) allows the employer to satisfy that requirement by posting a panel of six physicians from which an employee may accept services. An employee may make one change from a panel physician to another panel physician, and a panel physician may refer the employee to a nonpanel physician, although that nonpanel physician may not make further nonpanel referrals.[16] An employee may also ask the Board to order a change of physician or treatment. If granted the employer is liable for those expenses.[17]

"If the employer fails to provide any of the procedures for selection of physicians as set forth in subsection (c) of [O.C.G.A. § 34-9-201], an employee may select any physician to render service at the expense of the employer."[18] Further, if an employer terminates the employee's medical benefits, the employee is entitled to see any doctor she chooses and make the employer pay for it if she can prove she was still injured at that time as a result of the accident. If an employer-approved physician releases the employee back into the work force as cured, the employer has not adequately met its duty of providing treatment to the employee if the employee is able to prove that [her] subsequent medical problems were related to [her] work-related injury.[19]

However, the Court of Appeals essentially held none of this alleviates the claimant from meeting her burden of proving additional medical treatment is directly related to a work-related injury. The Superior Court erred in finding the claimant was automatically entitled to the right to a unilateral change of physician under Board rule 201(c). Because the Board made factual findings supported by evidence in the record that her injuries had resolved and no additional medical treatment was needed, that factual finding is not able to be disturbed on appeal. With that factual finding in mind, the question of which provider should be authorized for such treatment becomes moot.

[15] *Autozone, Inc. v. Mesa*, 342 Ga. App. 748, 753, 804 S.E.2d 734 (2017).
[16] O.C.G.A. § 34-9-201(b)(1).
[17] O.C.G.A. §§ 34-9-200(b); 34-9-201(e).
[18] O.C.G.A. § 34-9-201(f).
[19] *Lane v. Williams Plant Svcs.*, 330 Ga. App. 416, 421(2), 766 S.E.2d 482 (2014).

INGRESS/EGRESS IN NONEMPLOYER-CONTROLLED PARKING LOT

Smith v. Camarena, 352 Ga. App. 797; A19A1396 Ga. Ct. App. (Oct. 30, 2019).

In *Camarena*, the decedent was shot and killed in a parking lot outside of the grocery store employing her. A wrongful death claim was filed by her estate against the grocery store. Summary judgment was granted to the defendants by the trial court under the exclusive remedy provisions of the Worker's Compensation Act based on the finding that the accident had arisen out of and in the course of the decedent's employment.

On appeal, the summary judgment was reversed as there were genuine issues of material fact in dispute as to whether this was a compensable injury under the Workers' Compensation Act. The evidence showed the decedent had clocked out and left the store but remained in the parking lot talking to a coworker about matters unrelated to work. The parking lot in question was owned by the grocery store's landlord, was open to the public and served several businesses in the same shopping center. As the decedent was talking to the coworker, two men attempted to rob them at gunpoint and the decedent was shot during an exchange of gunfire between the armed robbers and the assistant manager of the store.

The issue of summary judgment turned on whether the injury arose out of and in the course of her employment. While the plaintiffs conceded the injury had arisen out of the employment, the Court of Appeals found there were factual questions as to whether the injury occurred in the course of her employment.

In its analysis, the court discussed that the "in the course of" requirement "refers to time, place and circumstances under which the accident took place."[20] An injury is in the course of employment if it occurs "within the period of employment at a place where the employee reasonably may be in the performance of his duties while he is fulfilling his duties or engaged in something incidental thereto."[21] Conversely, "[a]n injury that occurs during a time when the employee is off duty and is free to do as he or she pleases and when the employee is not performing any job duties is not compensable under the [Act]."[22]

The defendant was not on duty as she had ended her shift at the store. Further, she was standing outside talking with another person about nonwork matters. The defendant argued the ingress and egress rule applied, which provides that the period of employment generally includes a reasonable time for ingress to and egress from the place of work while on the employer's premises.[23] For purposes of this rule, the employer's premises means "real property owned, maintained, or controlled by the employer."[24] So "when an employee is injured in, or going to and from, a parking lot which is owned or maintained by the employer, the incident is compensable under workers' compensation since the injury arose during the employee's ingress or egress from employment."[25]

This "parking lot rule, in effect, extends the employer's premises to include parking lots that are owned, maintained and controlled by the employer."[26] It "does not extend so far as to allow coverage . . . for an injury that occurred in a public parking lot, which was neither owned, controlled, nor maintained by the employer."[27]

The court held the evidence in question at the very least raised a factual issue as to whether the defendant could satisfy the "in the course of" requirement. Therefore, the factual issues precluded them from obtaining summary judgment under the exclusive remedy doctrine.

20 *DeKalb Collision Ctr. v. Foster*, 254 Ga. App. 477, 482(1), 562 S.E.2d 740 (2002).
21 *Id. Accord Ray Bell Constr. Co. v. King*, 281 Ga. 853, 854-55, 642 S.E.2d 841 (2007).
22 *Stokes v. Coweta Cnty. Bd. of Ed.*, 313 Ga. App. 505, 509, 722 S.E.2d 118, (2012).
23 *Peoples v. Emory Univ.*, 206 Ga. App. 213, 424 S.E.2d 874 (1992).
24 *Id*. at 214.
25 *Tate v. Bruno's, Inc./Food Max*, 200 Ga. App. 395, 396-97(1), 408 S.E.2d 456 (1991).
26 *Hill v. Omni Hotel at CNN Ctr.*, 268 Ga. App. 144, 147, 601 S.E.2d 472 (2004).
27 *Tate*, supra at 397.

TERMINATIONS PARTIALLY RELATED TO THE COMPENSABLE INJURY

***Burch v. STF Foods, Inc.*, A19A1376 Ga. Ct. App. (Oct. 29, 2019).**

In *Burch*, the claimant sustained compensable injuries and was given specific light duty work restrictions and then returned to work. He sustained additional aggravations to his back on June 27, 2013, and Nov. 19, 2013. The claimant was then terminated for insubordination on Dec. 19, 2013, as a result of his continuing to lift things at work despite being instructed on multiple occasions by his supervisor against any heavy exertion. The record reflected he had been trained to perform less physically demanding tasks to minimize the risk of further injuries after the initial accident. Further, he was given specific instructions to remain at his workstation while on duty after the Nov. 19, 2013, incident. He was told not to lift anything unless given permission to do so by a member of management. However, he was witnessed restocking supplies on Nov. 23, 2013.

The claimant requested a hearing seeking, among other things, TTD benefits from the date of termination forward. With regard to the request for TTD benefits following his termination, the ALJ found insubordination the "main reason" for the termination. However, because the claimant's insubordination related to the work restrictions arising from his on-the-job injury, the ALJ found that the claimant had stopped working and become disabled because of his work injuries. The request for TTD benefits was therefore granted by the ALJ.

On appeal, the Appellate Division overturned this award for TTD benefits, finding that the ALJ had erred in finding the relationship between the work-related injuries and his stopping work was conclusive as to whether the claimant carried his burden of proving disability. They found the claimant had failed to prove that his loss of earning capacity was attributable to the compensable work injuries. The Superior Court affirmed the Appellate Division's award.

The Court of Appeals found proximate cause of an employee's termination is a factual determination reserved for the ALJ or the Board.[28] They further concluded they were bound by the "any evidence standard of review." The court held the record provided ample evidence to support the Board's determination that the proximate cause of the termination was insubordination. In particular, the claimant was instructed in writing, shortly after the first date of accident, not to lift anything and to ask other employees for assistance. He also had meetings with management on this issue to keep him from reinjuring his back. Despite these instructions, he continued to lift heavy items on multiple occasions, which were well documented. The separation notice explicitly stated the reason for termination was: "Insubordination, Antonio has been told on several occasions not to lift because of back problems, but he continued to do so any way."

Because the evidence in the record supported the State Board's factual finding that the reason for termination was insubordination, the Court of Appeals held this basis for termination was binding. Moreover, as a matter of law, the fact that the insubordination was indirectly related to the on-the-job injury was not dispositive of whether the claimant met his burden of proving his disability was a result of his on-the-job injury. As such, the Court of Appeals upheld the State Board's denial of TTD benefits.

INGRESS/EGRESS AND BREAK DEFENSE

***Frett v. State Farm Employee Workers' Compensation*, Supreme Court of Georgia (June 16, 2020) 309 Ga. 44, 844 S.E.2d 749.**

In *Frett v. State Farm Employee Workers' Comp.*, an employee slipped and fell at her place of employment during a scheduled lunch break.[29] The employee was an insurance claims associate for State Farm, where the employee had a scheduled 45-minute lunch break each day. The employee was free to do as she pleased on her break and could leave the office for lunch if she wished with no expectation to do work during her lunch break. The employee utilized the breakroom microwave to heat her food. As she was leaving the breakroom, she slipped on water and fell, bringing this case forward.[30]

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[28] *Padgett v. Waffle House*, 269 Ga. 105, 107(3), 498 S.E.2d 499 (1998).

[29] No. S19G0447, 2020 WL 3244075, at *1 (Ga. June 16, 2020).

[30] *Id*.

Prior to the decision in *Frett*, a relatively consistent "rest break defense" was in place, providing when an employee is taking a regularly scheduled break and is injured, that employee utilizes his own discretion within the break and the injury would not be compensable.[31] The argument for this typically involved the Court of Appeals of Georgia conceding that a break is generally conceived as "in the course of employment." However, for an injury to be compensable, the injury must "arise out of employment," as well. Due to the autonomy employees receive when conducting their scheduled breaks, injuries sustained during scheduled breaks were previously noncompensable.[32]

Despite consistent rulings from the Court of Appeals regarding rest breaks, the ALJ and lower courts have struggled to find consistent rulings when facts have slightly differed where even the Court of Appeals at times had been closely split. This struggle is evident in *ATC Healthcare Service, Inc. v. Adams,* where the ALJ awarded an employee's injury as compensable when the employee was injured on a lunch break, away from the employer's workplace. The Appellate Division and Superior Court affirmed the award of benefits on the grounds that the lunch break was not regularly scheduled. Rather, "the orientation schedule each day determined when the lunch break would occur," claiming the injury arose out of the employee's employment.[33] The Court of Appeals reversed in a 4-3 decision, only on the argument that the lunch breaks were conducted around the same time each day, and were therefore regularly scheduled.[34]

Conflicting opinions continued into the procedural history of this case, where the Court of Appeals in a split decision affirmed the denial of Frett's claim.[35] The majority's argument revolved around the long-held "scheduled break exception," citing to multiple cases the Court of Appeals had followed in the past where employees injured on or off employer premises were not compensable when on a scheduled break.[36]

The Supreme Court of Georgia stated that the Court of Appeals failed to address an analysis regarding Frett being "in the course of employment," and proceeded to analyze *Farr*.[37] The court began by stating that the break was in the course of her employment, as the injury was sustained on employer premises and not while running personal errands, which stands as relatively unsurprising given prior case law. When addressing the injury arising out of employment, the court heavily deviated from past cases, finding a causal connection between her injury and the conditions under which she worked.[38] The Supreme Court of Georgia then overruled *Farr*, stating that the term "arising out of" deals with causation, where the court in *Farr* failed to address causation when discussing the "arising out of" prong. The Supreme Court of Georgia finally stated that the analysis in *Farr* was misguided and the court "*never* relied on *Farr* in connection with the 'arising out of' inquiry, consistently adhering instead to the proper, causation-based approach."[39]

The Supreme Court did not stop at overruling *Farr*. It continued to overturn prior rulings involving the scheduled break defense by utilizing confusion regarding the ingress and egress rule. This was likely in response to the Court of Appeals' statement recognizing "current case law regarding the intersection of the ingress and egress rule with the scheduled break rule creates anomalous and arbitrary results."[40] The court stated that despite *Farr* being an 85-year-old case, it had not been heavily relied upon and predicted it would not detrimentally affect anyone's course of conduct. The court further clarified that reliance is also no reason to preserve *Farr* and other scheduled break rulings, concluding that Frett's injury was compensable, thereby narrowing the scheduled break defense.[41] Going forward, insurers will likely find themselves in a much more difficult position utilizing the scheduled break defense where the Georgia courts can now find a causal connection between injuries sustained during and throughout breaks.

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31 *Aetna Cas. & Sur. Co. v. Honea*, 71 Ga. App. 569, 31 S.E.2d 421, 422 (1944), overruled by *Frett v. State Farm Employee Workers' Comp.*, No. S19G0447, 2020 WL 3244075 (Ga. June 16, 2020).

32 *Ocean Acc. & Guar. Corp. v. Farr*, 180 Ga. 266, 178 S.E.2d 728, 730 (1935), overruled by *Frett v. State Farm Employee Workers' Comp.*, No. S19G0447, 2020 WL 3244075 (Ga. June 16, 2020).

33 *ATC Healthcare Serv., Inc. v. Adams*, 263 Ga. App. 792, 794, 589 S.E.2d 346, 348 (2003).

34 *Id*. at 589 S.E.2d 349.

35 *Frett v. State Farm Employee Workers' Comp.*, 348 Ga. App. 30, 36, 821 S.E.2d 132, 137 (2018), *cert. withdrawn* (Aug. 19, 2019), *cert. granted* (Oct. 7, 2019), *rev'd*, No. S19G0447, 2020 WL 3244075 (Ga. June 16, 2020).

36 180 Ga. 266, 178 S.E.2d 728 (1935); *see also, Am. Hardware Mut. Ins. Co. v. Burt*, 103 Ga. App. 811, 814, 120 S.E.2d 797 (1961); *Aetna Cas. & Sur. Co. v. Honea*, 71 Ga. App. 569, 31 S.E.2d 421 (1944); *Wilkie v. Travelers Ins. Co.*, 124 Ga. App. 714, 715-17, 185 S.E.2d 783 (1971); *Hanson v. Globe Indem. Co.*, 85 Ga. App. 179(2), 68 S.E.2d 179 (1951).

37 No. S19G0447, 2020 WL 3244075, at *5 (Ga. June 16, 2020).

38 *Id*.

39 *Id*. at 6.

40 *Id*. at 10.

41 *Id*. at 12.

INDEPENDENT CONTRACTOR VERSUS EMPLOYEE

Stalwart Films LLC, et al. v. Bernecker, et al., Court of Appeals of Georgia, A20A1896 (March 11, 2021).

In *Stalwart Films*, the plaintiff's family sued the defendant company for wrongful death after he was killed during a stunt he performed on the set of *the Walking Dead*. At trial, the jury found in favor of the plaintiffs. The defendants appealed. With regard to the workers' compensation issues, they argued the plaintiff was an employee or borrowed servant, and the claims were barred by the exclusive remedy provision of the Workers' Compensation Act. They argued in the alternative, even if Bernecker was an independent contractor, Stalwart was Bernecker's statutory employer. This status also barred the claims under the Workers' Compensation Act.

The Court of Appeals found the undisputed material evidence presented at trial established that the plaintiff was an employee of the defendant when he performed the stunt on the date in question.

> [U]nder longstanding Georgia law, the true test to be applied in determining whether the relationship of the parties under a contract for the performance of labor is that of employer and servant, or employer and independent contractor, lies in whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results in conformity to the contract.[42]

"The right to control the time means the employer has assumed the right to control the person's actual hours of work. The right to control the manner and method means the employer has assumed the right to tell the person how to perform all details of the job, including the tools he should use and the procedures he should follow."[43]

Per the court's discussion, the plaintiff could request minor changes to assist in performing the stunts or refuse to perform them if he felt unsafe. However, the defendant retained the right to control the time, manner and method of the work the plaintiff performed. They had control over even his slightest movement or body placement, as the stunt was choreographed as part of a larger scene. He also had a specific call time on a specific day and did not have authority to change the time. The court also dispensed with the argument that the plaintiff being paid on a 1099 without withholding taxes as evidence of a factual dispute over his employment status. The court has previously held that "the fact that [an employer] issued its workers [IRS] Form 1099 (rather than Form W-2) and did not withhold taxes from their paychecks or provide insurance for the workers does not create a jury question on [Bernecker's] status as an employee."[44]

RES JUDICATA

Trejo-Valdez v. Associated Agents, Court of Appeals of Georgia (Oct. 29, 2020) 357 Ga. App. 461.

In *Trejo-Valdez*, the claimant sustained an on-the-job back injury that had been accepted as compensable by the employer/insurer. After two surgeries, the claimant's ATP recommended a spinal cord stimulator. This was denied, and the issue was tried at an evidentiary hearing. The ALJ denied the request for the spinal cord stimulator. A new ATP subsequently recommended a trial of the spinal cord stimulator, and another hearing was requested. The ALJ approved the trial of the spinal cord stimulator at the next hearing. The Superior Court reversed the order, finding that the claimant's request for a stimulator was barred by res judicata.

The employer/insurer had made the res judicata argument at the trial level, and the ALJ observed that "workers' compensation claims are constantly evolving and an employee's entitlement to benefits, especially medical benefits, changes in accordance with the employee's changing medical condition and the treatment recommendations of the employee's physicians." As a result, the ALJ concluded that "the doctrine of res

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[42] *Estes v. G&W Carriers*, 354 Ga. App. 156, 157(2), 840 S.E.2d 486 (2020), citing *Golosh v. Cherokee Cab Co.*, 226 Ga. 636, 637, 176 S.E.2d 925 (1970); *see also* O.C.G.A. § 34-9-2 (e).

[43] *Boatright v. Old Dominion Ins. Co.*, 304 Ga. App. 119, 120(1), 695 S.E.2d 408 (2010), quoting *Palma v. Ga. Farm Bur. Ins. Co.*, 270 Ga. App. 333, 336, 606 S.E.2d 341 (2004).

[44] *Estes v. G&W Carriers*, 354 Ga. App. 156, 159, 840 S.E.2d 486 (2020).

judicata [did] not preclude [Trejo-Valdez] from pursuing his claim for medical treatment" in view of "different questions of fact" presented by "the passage of time with additional failed conservative treatment, a worsening in [Trejo-Valdez's] symptoms, coupled with the assessment and opinions of a new expert, Dr. Pollydore."

The Court of Appeals agreed with the Board that the doctrine of res judicata was inapplicable in the instant case. However, they noted res judicata does apply to workers' compensation claims.[45] Under this doctrine, "[a]n administrative decision acts as an estoppel in any subsequent judicial proceeding between the same parties where the issue is identical to that decided in the administrative proceeding."[46] However, a former judgment binds only as to the facts in issue and events existing at the time of such judgment. It does not prevent a re-examination even of the same questions between the same parties, if in the interval the material facts have so changed or such new events have occurred as to alter the legal rights or relations of the litigants.

In this situation, the claimant's medical condition had changed such that it was not an issue of whether the spinal cord stimulator was necessary previously. Rather, the issue had become whether the spinal cord stimulator was necessary based on his present medical condition. As such, the issues were not identical and res judicata did not apply.

[45] *See Vought Aircraft Indus. v. Faulds*, 281 Ga. App. 338, 339, 636 S.E.2d 75 (2006); *Webb v. City of Atlanta*, 228 Ga. App. 278, 279(1), 491 S.E.2d 492 (1997).

[46] *Aldrich v. City of Lumber City*, 273 Ga. 461, 465, 542 S.E.2d 102 (2001).

Spinning Straw Into Gold: A Practical Guide to MSAs and Subrogation

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During law school, Monica worked as a law clerk for the Honorable Steve C. Jones, then for a Georgia Superior Court Judge for the Western Judicial Circuit. Prior to attending law school, Monica taught high school and college-level English and literature in the Czech Republic.

Spinning Straw Into Gold: A Practical Guide to MSAs and Subrogation

MEDICARE SET ASIDES

Medicare set asides (MSAs) come into play in workers' compensation when there is a possibility of recovery of past or future medical expenses by the Centers for Medicare and Medicaid (CMS). Medicare steps in as a secondary payer under the Medicare Secondary Payer Act 42 U.S.C. § 1395y and 42 C.F.R. § 411.20 *et al*. As the primary payer, the employer and its workers' compensation insurance carrier have to decide if an MSA is necessary, how to reduce the cost of an otherwise cost-prohibitive MSA and whether the MSA should be approved by CMS. This section will address these issues and provide a practical guide for the employer and insurer on MSAs in workers' compensation claims.

WHAT IS AN MSA AND WHY DOES IT MATTER?

An MSA provides funds to the claimant for "qualified medical expenses," which would otherwise be covered by Medicare. As workers' compensation is the primary payer for work-related injuries, providers are required to bill workers' compensation first.

Medicare was not always a secondary payer. In 1980, Congress responded to increasing Medicare costs and shifted Medicare from the primary to the secondary payer for its beneficiaries. Consequently, Medicare is the secondary payer to group health plan insurance, self-insurance and workers' compensation insurance. As the secondary payer, Medicare is not allowed to pay for a beneficiary's medical expenses when payment is *reasonably expected* under workers' compensation.[1] Federal law also allows Medicare to recover any "conditional payments" made by Medicare before the claim has resolved by means of settlement or judgement.[2] Medicare remains the secondary payer until the settlement proceeds are appropriately exhausted.

It is important to understand this framework because the consequences are dire if the employer and insurance carrier do not consider Medicare's interests. The federal government can seek recovery by assuming the beneficiary's right to subrogation for payment of medical bills or file an independent claim against the primary payer or *any other entity* receiving payments from the primary payer.[3] Among these other entities who may be at risk are the insurer, third-party administrators, employers, the self-insured plan or the party responsible for primary payments.[4] If that were not enough, CMS can recover double damages for a cause of action against the primary payer and collect $1,000 per day for failure to report a claim.[5]

IS AN MSA NECESSARY?

All parties to a workers' compensation settlement are obligated to consider Medicare's interests when closing out future medical treatment.[6] If the claimant is a Medicare beneficiary or if she has a reasonable expectation of becoming a Medicare beneficiary in the next 30 months after settling the claim, an MSA is required. From a practical standpoint, this refers to a claimant who has applied for Social Security disability income (SSDI) benefits, been denied SSDI but intends to appeal the decision, appealed the SSDI decision or refiled her application, is 62.5 years old and/or has end stage renal disease (ESRD) but does not yet qualify for Medicare for ESRD.

The MSA provider will take into account the claimant's medical records and project future Medicare-reimbursable medical expenses related to the work injury over the claimant's lifetime. Some states limit the number of years a claimant can receive medical benefits through workers' compensation, which begs the

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1 42 U.S.C. § 1395y(b)(2) (2013).
2 *Id.* § 1395y(b)(2)(B).
3 42 C.F.R § 411.26 (2013).
4 *Id.* § 411.24.
5 *Id.* § 411.24(c)(2); 42 U.S.C. § 1395y.
6 42 C.F.R § 411.46(a).

question of whether the MSA should be limited to the same period of time. In Georgia, for all noncatastrophic work injuries occurring *on or after* July 1, 2013, medical benefits are limited to a maximum of 400 weeks. The complexity of obtaining CMS recognition of state limitations on medical treatment to limit the MSA allocation is beyond the scope of this paper, but any workers' compensation attorney at Swift Currie would be happy to discuss this issue with you.

For injuries that occurred *before* July 1, 2013, medical benefits are provided over the claimant's lifetime. Prescription medications are typically allocated over the claimant's life expectancy based on a rated age. As of April 25, 2020, CMS uses the Centers for Disease Control and Prevention's (CDC's) Table 1: Life Table for the total population: United States, 2017 for workers' compensation MSA life expectancy calculations.

WHAT IF THE MSA IS EXORBITANT?

With the rising cost of prescriptions, it is not uncommon to see MSAs skyrocket. To mitigate a $500,000 MSA, contact the claimant's authorized treating physician (ATP) about the need for future prescriptions. It is possible the ATP will taper a particular medication over the claimant's lifetime or confirm that a certain medication is no longer needed. The ATP may also be able to recommend a generic form of the prescription to reduce costs.

We also recommend seeking another opinion about certain procedures in an effort to reduce the MSA. This approach is often necessary with spinal cord stimulators, which can inflate the MSA dramatically. Sometimes an opinion from a second doctor will help the ATP to reconsider the recommendation.

Another option is to bifurcate the settlement by settling the indemnity portion first and leaving medical benefits open until the MSA is reduced or approved by CMS, or both. This approach is effective if you have reason to believe the MSA will decrease in time. The downside is leaving medical exposure open, which is risky given the claimant's condition could deteriorate over time and result in more medical exposure.

SHOULD CMS APPROVE THE MSA?

This is a trick question because CMS does not require submission of an MSA. However, if you do not obtain CMS approval, CMS is not bound by the proposed amount. Consequently, CMS may refuse to pay for future medical expenses even if the claimant would have otherwise been covered by Medicare. If CMS approves the MSA and that amount is exhausted, Medicare becomes the primary payer and will cover related medical bills.

CMS will review an MSA that falls into the following categories:

1. The claimant is a Medicare beneficiary and the total settlement amount exceeds $25,000; or
2. There is a "reasonable expectation" the claimant will become a Medicare beneficiary within 30 months of the settlement date and the total settlement amount exceeds $250,000.

Keep in mind that the parties are required to "consider Medicare interests" even if CMS approval is not necessary. In other words, if your 60-year-old claimant, who has not applied for SSDI and is not on Medicare, settles for less than $250,000, CMS will not review the MSA, but an MSA is still advisable under the circumstances. Alternatively, another option is to include language in the stipulation and agreement that stipulates the parties have protected Medicare's interests by allocating a certain amount of the settlement to cover the cost of medical treatment that is covered by Medicare. We caution, however, that Medicare could take the position that such amount is insufficient for protecting Medicare's interests.

Once an MSA is approved by CMS, it must be funded. The employer/insurer can fund the MSA with a lump sum payment or with an annuity. The parties will decide who will administer the MSA trust. The claimant can self-administer the trust or a conservator or professional entity can be designated.

MSA CONCLUSION

Assessing the need for an MSA before discussing settlement is important. The best strategy is to assess the need for an MSA early and maintain as much control over medical treatment as possible to minimize future costs.

SUBROGATION

Although workers' compensation is the exclusive remedy against a claimant's employer/insurer for a work-related injury, there are some cases in which the claimant can pursue a claim against a negligent third party. In 1992, the General Assembly codified subrogation rights in Georgia in O.C.G.A. § 34-9-11.1. From the employer and insurer's standpoint, there may be an opportunity to intervene and assert a lien for disability benefits, death benefits and medical expenses paid to or on behalf of the claimant. However, the lien is recoverable only "if the injured employee has been fully and completely compensated, taking into consideration both the benefits received under [the Workers' Compensation Act] and the amount of the recovery in the third party claim for all economic and noneconomic losses incurred as a result of the injury."[7] The purpose of this section is to consider the meaning of "full and complete compensation" and provide practical tips for asserting a lien.

WHAT IS "FULL AND COMPLETE COMPENSATION"?

The meaning of "fully and completely compensated" has been open to interpretation in Georgia courts. In 2015, the Court of Appeals held that if a claimant had not been fully and completely compensated for all economic and noneconomic losses as a result of the injury, the subrogation lien should be properly denied.[8] According to this decision, subrogation in a workers' compensation claim only extends recovery to economic losses. If there are no definitive statements by the court or in the settlement documents determining what money is for noneconomic pain and suffering, as opposed to economic losses, the employer/insurer cannot enforce their lien. An injured worker must be made whole for the subrogation lien to be enforced in a third-party setting.[9]

The employer/insurer has the burden of proving the employee has been "fully and completely compensated."[10] We know from case law that the "trial court may not consider the affirmative defenses of contributory/comparative negligence/assumption of risk . . . because the employee's total economic and noneconomic losses make up the full and complete compensation unreduced by such defenses" under the statute.[11] In other words, a jury verdict that is reduced to comparative negligence of the employee would most likely fail to "fully and completely compensate" that employee.

HOW DO EMPLOYERS/INSURERS ASSERT A LIEN?

The meaning of "full and complete compensation" is less than clear. As an illustration of where to intervene and assert a lien, assume the claimant is injured while driving a company vehicle. The employer/insurer paid out the claimant's claim and the claimant filed a third-party claim against the negligent driver (and her insurance company) for damages. The first step for the employer/insurer to preserve their subrogation rights is to put all parties on notice of the lien and your expectations of recovery. In other words, by certified mail, the employer/insurer should notify the claimant (or her attorney if she is represented), the third-party tortfeasor and the third-party tortfeasor's insurer if known.

Then, the employer/insurer monitors any progress with the third-party claim. If it appears the claimant is not going to file suit or settle within the two-year statute of limitations, the employer/insurer should decide whether it is cost effective to take the lead and file suit. The employer/insurer can file suit in its own name or in the name of the employee to enforce the lien.[12]

More commonly, the claimant files suit within the statute of limitations, and the employer/insurer intervenes in that lawsuit. They intervene by filing a motion to intervene pursuant to O.C.G.A. § 9-11-24 and O.C.G.A. § 34-9-11.1. Notably, the right to intervene does not expire within the two-year statute of limitations. When the claimant files a claim within the two-year statute of limitations, the employer/insurer may be able to intervene much later in the lawsuit. The Court of Appeals has held that when a motion to intervene is made prior to a final judgment, the intervention does not prejudice any of the parties' rights and, if the denial of

7 O.C.G.A. § 34-9-11.1(b).

8 *Best Buy Co. Inc., v. McKinney*, 334 Ga. App. 42, 778 S.E.2d 51 (2015).

9 *Id.*

10 *Ga. Elec. Membership Corp. v. Garnto*, 266 Ga. App. 452, 597 S.E.2d 527 (2004).

11 *Canal Ins. Co. v. Liberty Mut. Ins. Co.*, 256 Ga. App. 866, 873, 570 S.E.2d 60, 67 (2002).

12 O.C.G.A § 34-9-11.1(c).

the intervention would dispose of the intervenor's rights, the motion to intervene should be granted.[13] The statute of limitations does not control whether the intervenor's motion is timely. Rather, the timeliness of the intervention should be determined on a case-by-case basis within the discretion of the trial judge.[14]

WHAT CAN YOU EXPECT AFTER YOU ASSERT A LIEN?

A subrogation lien provides leverage for negotiating a workers' compensation claim. Generally, the parties are agreeable to associating a price on the lien for settlement purposes rather than cashing it out.

Furthermore, becoming a party to a third-party claim makes it difficult for the claimant and tortfeasor to settle their claim without reaching some kind of agreement with you. In fact, it provides the right to a bench trial on the issue of whether the claimant has been "fully and completely compensated" if the claimant and third-party tortfeasor do not address your lien. It is not easy to prove "full and complete compensation," but there is added leverage in that such a proceeding would delay any settlement.

CONCLUSION

In conclusion, the following list provides practical tips for asserting a subrogation lien:

1. Provide notice of the lien in writing by certified letter as soon as possible.
2. Contact your favorite Swift Currie attorney as soon possible for assistance. The claimant and third-party tortfeasor and their attorneys will likely ignore the subrogation lien unless another attorney points it out.
3. If a third-party lawsuit has been filed, intervene as soon as possible to protect the lien.
4. Use the lien as leverage to settle the workers' compensation claim. For example, offer to waive the lien in exchange for a lower settlement demand in the workers' compensation claim.
5. Do not be discouraged by the outcome of your lien. Often there is no recovery. It may be more valuable to you as leverage than as a means of recovery.

[13] *Payne v. Dundee Mills, Inc.*, 235 Ga. App. 514, 510 S.E.2d 67 (1998).

[14] *Sommers v. State Comp. Ins. Fund*, 229 Ga. App. 352, 494 S.E.2d 82 (1997).

Bibbidi-Bobbidi-Boo-Boos: Compensability of Hernias in Georgia

By Jeff K. Stinson

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Jeff K. Stinson is a Swift Currie partner who has more than 15 years of experience counseling clients through difficult workers' compensation claims and advocating on their behalf. During this time, he has developed longstanding relationships and become a trusted adviser to his clients, which include insurance companies and employers in a diverse spectrum of industries, such as retail sales, childcare, education, trucking and transportation and religious institutions, to name a few.

Jeff's attention to detail and thoroughness ensure his clients' cases are looked at through careful and critical eyes. Because of his diligence, he has been able to spot crucial details or pieces of evidence that often get overlooked. Additionally, he prides himself on being responsive to and always available for his clients and ensures he understands his clients' business models and goals so he can represent their best interests. Knowing his clients and their businesses is key to his successful practice and enables his ability to provide full-service representation as if he were in-house counsel.

Jeff honed his strong skills in the courtroom when he interned at a solicitor general's office in Douglas County during law school. In this role, he prosecuted misdemeanor crimes, and that raw, hands-on experience helped him become comfortable in any kind of courtroom and fast on his feet in front of judges and juries.

Bibbidi-Bobbidi-Boo-Boos: Compensability of Hernias in Georgia

A hernia is usually more than a boo-boo and it most definitely requires much more than the standard "arising out of and in the course of the employment" analysis for compensability in Georgia. While a hernia must arise out of and occur in the course of the employment, in Georgia, there are five other requirements that must be met to prove compensablility. Once the claim is found compensable, there are a number of requirements and limits on available benefits that do not exist in any other type of injury. While hernias are not extremely common, it is important to understand the criteria for compensability, as well as the unique nature of benefits available for a hernia.

TYPES OF HERNIAS

A hernia occurs when an organ or fatty tissue squeezes through a weak spot in a surrounding muscle or connective tissue called fascia. There are six main types of hernia:

- An **inguinal** hernia occurs when the intestine or the bladder protrudes through the abdominal wall or into the inguinal canal in the groin. Inguinal hernias are the most common type of groin hernias and are most often seen in men.
- An **incisional** hernia occurs when the intestine pushes through the abdominal wall at the site of previous abdominal surgery. Incisional hernias occur most often in elderly or overweight people and those who are inactive after abdominal surgery.
- A **femoral** hernia occurs when the intestine enters the canal carrying the femoral artery into the upper thigh. This type of hernia is most common in women, especially during pregnancy or in individuals who are obese.
- An **umbilical** hernia occurs when part of the small intestine passes through the abdominal wall near the navel. This type of hernia is common in newborns, but is also common among obese women or women who have had many children.
- A **hiatal** hernia happens when the upper stomach squeezes through the hiatus, an opening in the diaphragm through which the esophagus passes.
- An **epigastric** hernia occurs in the epigastric area of the abdomen. This is the area above the belly button, but below the ribcage.

CRITERIA FOR COMPENSABILITY

As indicated, a hernia must arise out of and in the course of employment to be compensable. However, pursuant to O.C.G.A. § 34-9-266, a hernia must meet five additional requirements to be found compensable: (1) there was an injury resulting in hernia; (2) the hernia appeared suddenly; (3) the hernia was accompanied by pain; (4) the hernia immediately followed an accident; and (5) the hernia did not exist prior to the accident for which compensation is claimed.

Injury Resulting in Hernia

In all Georgia workers' compensation claims, there must be an injury by accident for there to be a compensable claim. Hernias are no exception and generally follow the same requirements for an injury by accident. In *Hardware Mutual Casualty v. Sprayberry*, the court confirmed the injury requirement for a hernia case was no different than in any other case.[1] The court also held there does not have to be any type of unusual circumstance or event leading to the injury, but that it can occur during "usual and expected manner in the ordinary performance of his duties."

[1] *Hardware Mut. Casualty Co. v. Sprayberry*, 195 Ga. 393, 24 S.E.2d 315 (1943).

Hernia Appeared Suddenly

The second requirement set for by O.C.G.A. § 34-9-266 is that the hernia must appear suddenly. In *Liberty Mutual Insurance Co. v. Blackshear*, the court held that "suddenly" was not synonymous with instantaneous and that there must be a relative and reasonably close coincidence between the accident and the hernia.[2] In *Blackshear*, the claimant did not discover the hernia until one week after his accident, which the court, when considering the evidence of the injury and the claimant's treatment for the injury, found to meet the sudden requirement.

Hernia Was Accompanied by Pain

A compensable hernia must be accompanied by pain. Of course, pain is subjective. There is no requirement that the pain be felt immediately. In fact, in *Royal Indemnity Co. v. Beckmann,* the claimant did not feel pain until several days after the accident.[3] The Court of Appeals found the claimant satisfied the pain requirement, despite providing a statement shortly after the injury in which he denied being in any pain.

Hernia Immediately Followed an Accident

The immediate requirement is very similar to the sudden requirement outlined previously and detailed in *Blackshear*. In *Standridge*, the court excluded super-added hernias from the scope of compensability.[4] In that case, the claimant developed a hernia while attending physical therapy that was recommended due to his compensable work injury. The court upheld a denial of the claim as the hernia did not appear immediately following the injury, but after subsequent medical treatment was provided.

Hernia Did Not Exist Previously

A compensable hernia must not have existed prior to the injury giving rise to the claim. In *Littlejohn v. Piedmont Hotel,* the claimant died due to complications that developed following hernia surgery.[5] The claim for a compensable hernia was denied as the evidence showed that the claimant had been treating for a hernia for eight to nine years prior to his work injury.

Although benefits for a hernia, including surgery, are not allowed if the hernia was pre-existing, disability benefits may be awarded based upon an aggravation of a pre-existing condition. In *Boswell v. Liberty Mutual Insurance Co.*, the claimant was diagnosed with a femoral hernia in April 1946 and was recommended surgery.[6] He declined the surgery and sustained two work-related aggravations of his pre-existing condition in May and October 1946. He ultimately underwent surgery, which his doctor testified was more complicated than it would have been had the claimant had surgery when it was recommended originally. The court upheld the denial of medical benefits associated with the surgery, but authorized payment of income benefits on the grounds that the clamant had a work-related aggravation of a pre-existing condition resulting in his disability.

In *Union City Auto Parts v. Edwards*, the claimant had two hernias prior to his employment with Union City.[7] He was involved in a work-related motor vehicle accident while in his employment, which resulted in a worsening of his pre-existing hernia. His employer paid disability benefits for his missed time for work but denied payment of medical expenses associated with the surgery. The Court of Appeals upheld the denial in light of the fact that the evidence showed the hernias were pre-existing. The court rejected the claimant's argument that O.C.G.A. § 34-9-1(4) provided for compensation for an aggravation of a pre-existing condition by citing the specific criteria laid out by the hernia statute, which precluded recovery for a pre-existing hernia.

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[2] *Blackshear v. Liberty Mut. Ins. Co.*, 69 Ga. App. 790, 26 S.E.2d 793 (1943).
[3] *Royal Indem. Co. v. Beckmann*, 66 Ga. App. 369, 17 S.E.2d 910 (1941).
[4] *Standridge v. Candlewick Yarns*, 202 Ga. App. 553, 415 S.E.2d 10 (1992).
[5] *Littlejohn v. Piedmont Hotel*, 62 Ga. App. 695, 9 S.E.2d 688 (1940).
[6] *Boswell v. Liberty Mut. Ins. Co.*, 77 Ga. App. 556, 49 S.E.2d 117 (1948).
[7] *Union City Auto Parts v. Edwards*, 263 Ga. App. 799, 589 S.E.2d 351 (2003).

BENEFITS ALLOWED FOR HERNIA

Medical Treatment/Surgery

The procedure for medical treatment in the case of a hernia is also different than it is for another type of injury. In typical cases, the Board does not take a position as to what kind of treatment the claimant needs, nor do they typically compel claimants to pursue treatment. However, in the event of a hernia, the statute specifically requires the hernia be repaired surgically.[8] In fact, the Workers' Compensation Act states that disability benefits are not allowed during any period for which the claimant declines surgery. Benefits can be awarded if a claimant ultimately decides to have the surgery, but are only due from the date of the surgery and not during the period of the claimant's refusal.[9]

The statute itself provides a limited exception to the requirement for surgery. A claimant does not have to have surgery if "it is shown that the employee has some chronic disease or is otherwise in such physical condition that the board considers it unsafe for the employee to undergo such operation." In such circumstances the claimant may be entitled to temporary partial disability (TPD) benefits, but not temporary total disability (TTD) benefits.

Income Benefits

O.C.G.A. § 34-9-266 provides for the payment of "time loss" associated with a hernia, which has been interpreted to mean payment of TTD or TPD benefits. Those benefits are payable consistent with the normal requirements and limitations associated with TTD and TPD benefits. Death benefits can be awarded in the event death occurs as a result of a compensable hernia.

PPD Benefits

O.C.G.A. § 34-9-266 specifically excludes the payment of permanent partial disability (PPD) benefits for hernias, although it provides they can be awarded if there is PPD found pursuant to an examination conducted under O.C.G.A. § 34-9-202, which governs examinations. There is no specific rating for permanent impairment associated with a hernia pursuant to the *AMA Guides to the Evaluation of Permanent Impairment, 5th Edition*. However, Chapter 6 is dedicated to ratings for injuries to the digestive system. In the vast majority of hernia cases, there will not be any permanent impairment.

CONCLUSION

Hernia injuries have very specific and different requirements than the typical work injury in Georgia. It is important to review any claim for a hernia to ensure it not only meets the usual requirements for a compensable work injury, but that it meets the specific requirements laid out by O.C.G.A. § 34-9-266.

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8 O.C.G.A. § 34-9-266.

9 *Fidelity & Cas. Co. v. Whitehead*, 114 Ga. App. 630, 152 S.E.2d 706 (1966).

Attorney Bios

John F. Sacha
Partner

John F. Sacha is a Swift Currie partner who defends businesses in general litigation matters, with an emphasis on handling workers' compensation claims. John has counseled clients through hundreds of mediations and hearings before Georgia's State Board of Workers' Compensation (SBWC) to provide efficient and favorable resolutions in matters ranging from minor workplace injuries to catastrophic injury and wrongful death claims. He represents not only insurance companies and third-party administrators, but also hospitals and other healthcare practices, manufacturing facilities and employment agencies.

Throughout his more than 40 years of practice, including his service as Swift Currie's managing partner from 1996 through 2009, John has developed a deep understanding of and extensive relationships with a broad network of experts and key entities that can provide an advantage for clients in the context of a workers' compensation claim. His professional relationships extend to SBWC administrative law judges (ALJs), catastrophic injury health care providers, numerous medical doctors and specialists and other leading professionals within the Georgia medical community.

John leverages his extensive experience to provide creative solutions to each issue that may arise in the context of a workers' compensation matter, whether aggressively defending against a claim or mediating for a favorable resolution. He works with his clients to ensure an efficient and cost-effective outcome in every case. This can include mitigating losses in a claim by selecting the best care providers to address the injured worker's medical needs at a reasonable cost or finding contractors to make necessary renovations at a home for a catastrophically injured employee.

John understands the importance of expedient resolutions in workers' compensation claims, and he provides his clients with the upper hand of a detailed mastery of complex medical documentation in their cases, which is crucial to resolving a matter efficiently with a favorable outcome.

John is a longtime leader in his field and at Swift Currie. He serves as a special assistant to the Georgia attorney general for workers' compensation issues, and he was selected as a leader in law in the "Power Book" published in the *Atlanta Business Chronicle*'s 30th anniversary issue.

An active community servant, John has also been a longstanding leader in several civic organizations. He previously served as the president and director of the Center for Puppetry Arts and on the board of directors for Georgia Citizens for the Arts, Ansley Golf Club and Peachtree Presbyterian Preschool.

Robert R. Potter
Partner

Seasoned attorney Robert "Bobby" R. Potter is a Swift Currie partner who focuses his practice on workers' compensation and government affairs. In his over 40 years as a lawyer, Bobby has handled thousands of cases for insurers and self-insurance groups. In addition, he has built long-term relationships with national insurance companies.

Bobby has experience dealing with the Georgia Department of Insurance, which has helped him effectively work on behalf of his clients. He has also served as chair of the Legislative Committee of the Chairman's Advisory Committee for Workers' Compensation for more than 10 years and a member of the committee for a couple of decades.

Bobby has served as the chairman of the Workers' Compensation Section of the State Bar of Georgia and is a member of the Defense Research Institute (DRI). He also is a co-author of the *Georgia Workers' Compensation Law and Practice*, which has been updated annually since its original publication in 1981.

He has authored and co-authored numerous law review articles and frequently appears as a speaker both on workers' compensation and legislative topics.

Douglas A. Bennett
Partner

Douglas "Doug" A. Bennett has represented clients in general civil litigation for more than four decades and handles matters related to workers' compensation, automobile litigation, catastrophic injury and wrongful death, premises liability, product liability and trucking and transportation disputes. Doug also serves as a mediator for companies to resolve their disputes outside of the courtroom.

Doug's clients span industry sectors and have included many high-profile businesses, such as industrial resource organizations, large senior health care providers, major insurance carriers and consumer product manufacturers, to name a few.

Doug has represented clients in thousands of high-stakes matters, working to analyze each case objectively, identify strengths and weaknesses and leverage his extensive experience to advise clients on the best path forward. He also lends his broadly informed legal perspective to provide greater access to quality legal representation through his leadership of Swift Currie's pro bono efforts.

Doug is an established leader in his practice area, having served six years on the Executive Committee of the Workers' Compensation Section of the State Bar of Georgia, including one year as the committee's chair. He is also a frequent lecturer on a variety of issues relevant to his clients, including the compensability of heart attacks, ethical considerations and the willful misconduct defense.

Mark J. Goodman

Partner

Mark Goodman defends mid- to large-sized self-insured employers, insurance companies and governmental entities throughout the state of Georgia in workers' compensation claims. He also handles claims brought against nursing homes.

A 35-year veteran of the practice, Mark has handled hundreds of mediations and hearings throughout his career. He currently serves on the Georgia State Board of Workers' Compensation Chairman's Advisory Committee, providing input on legislation, rules and public education for the system.

Mark fights hard for his clients to resolve their issues efficiently and cost effectively, keeping them well informed of the progress of their cases along the way. He strives to maintain a reputation with other attorneys of being fair to work alongside and to oppose, which is reflected in his recognition among the peer-selected *Best Lawyers in America*.

While Mark recognizes the value of his years of experience, he considers his integrity and reputation to be his most important assets as he serves his clients.

Joseph A. Munger

Partner

Joseph "Joe" A. Munger is a Swift Currie partner and veteran workers' compensation defense attorney with 35 years of experience. On average, he tries one workers' compensation case per month and, as a result, he has appeared in front of every administrative law judge in the state.

Joe has worked with a wide variety of clients including organizations in the retail, hotel, restaurant, construction, utilities, health care, insurance, tree service, manufacturing, transportation and banking industries. His reputation as a vigorous advocate, with a victorious trial record to match, serves his clients well in the courtroom and at the settlement table. As a result, he is able to instill confidence in his clients because they know he can meet their needs and solve their problems efficiently.

To his practice, Joe brings strong legal writing and research skills, which he honed during his time as a clerk for a federal court judge. When he is not using his communication skills to obtain wins for his clients, Joe shares his experience by giving lectures and publishing articles on employment-related subjects, such as the drug-free workplace, discrimination, disability and workers' compensation topics. He has also served on Swift Currie's Management Committee and the Employment and Labor Law Committee of the Defense Research Institute (DRI).

Michael Ryder
Partner

Mike Ryder is a partner at Swift Currie with more than 30 years of experience practicing primarily in the area of workers' compensation defense. He handles significant legal matters for employers and insurers.

Mike is skilled in every aspect of worker's compensation defense, including interviewing witnesses, crafting settlements, facilitating mediations and aggressively defending clients in the courtroom.

Whether he is developing a creative strategy to solve their legal needs or educating employers on how to effectively train their employees, Mike puts his clients' legal objectives at the forefront of his priorities. He uses his vast knowledge of Georgia's workers' compensation laws to represent his clients in the most efficient and cost-effective manner and, when possible, counsel them on how to avoid litigation in the first place.

Debra D. Chambers
Partner

Debra Chambers has represented clients in workers' compensation matters for more than 26 years. She serves as a valued business partner and litigation counsel for self-insured employers, as well as insurance companies.

Debra represents clients in a diverse spectrum of industries, including sporting goods sales, food sales, air travel, food production, hospitality and insurance.

Early in her career, Debra studied medical records and terms daily. This specialized knowledge along with a great memory has benefited her clients in cases where she has identified discrepancies in claimants' stories and recognized symptoms of diseases or illnesses.

Debra has also used defenses based upon the affirmative defenses found in O.C.G.A. § 34-9-17, as well as the standard defenses. She has successfully conducted numerous mediations, both at the State Board and with private mediators, for the benefit of her clients.

As a former sales finance administrator and a contracts representative for Hewlett-Packard, Debra uses her business experience and contract negotiating skills to ensure her clients' interests are always well represented and their desired goals are achieved.

Earlier in her legal career, Debra practiced in the area of insurance defense litigation, employment discrimination and workers' compensation with another Atlanta law firm.

Richard A. Watts

Partner

Richard "Rusty" A. Watts is a seasoned Swift Currie partner with 25 years of experience in workers' compensation and liability defense. His clients include construction companies, school districts, educational institutions, supermarkets, school board associations and insurance companies.

Rusty has tried more than 100 cases over the years. He previously worked as a claimants' attorney, which gives him the ability to think about strategy from the perspective of both sides of a case. Rusty has a deep understanding of what motivates the plaintiff's side of the aisle and is able to draw on this knowledge to develop the most effective defense for his clients.

Rusty has extensive experience working closely with the State Board of Workers' Compensation. He is also an avid public speaker who has given presentations to the Southern Association of Workers' Compensation Administrators, the State Board of Workers' Compensation and the International Association of Industrial Accident Boards and Commissions.

When he is not representing his clients, Rusty contributes to legal education by working as a part-time instructor at Georgia State University College of Law and the Department of Risk Management & Insurance, as well as Mercer University's Stetson School of Business and Economics. He also is on the Dean's Board of Visitors at Walter F. George School of Law at Mercer University and previously served as the president of the school's alumni board of directors.

Timothy C. Lemke

Partner

Swift Currie partner Timothy "Tim" C. Lemke has more than two decades of experience representing and counseling employers through workers' compensation claims. His clients include several large national retail chains, staffing agencies, waste management and trucking companies whom he has advocated for in approximately 500 workers' compensation hearings and appellate hearings.

Tim takes a vested interest in each client, both professionally and personally, by fully educating himself on their business goals as well as their individual needs. Forming these relationships builds trust, allowing a truly beneficial partnership to begin.

Tim familiarizes himself with each case at hand while analyzing the matter in conjunction with the client's specific business goals. Through this process, he works to offer a more comprehensive approach to both the litigation and resolution of cases. Keeping his clients informed through every step of the process, he steers potential impact away from the business' bottom line and the culture of the company as a whole. This insightful perspective earned Tim recognition as the 2015 Workers' Compensation Attorney of the Year by Georgia Global Law Experts.

After college and prior to joining Swift Currie, Tim pursued his interest in journalism and also worked as an ad sales representative where he learned about client service. Together, the positions taught him the importance of blending study and strategy with rigorous preparation and relationship building.

Tim proudly began his legal career as a law clerk at Swift Currie where he has continued to practice for almost 25 years. While this is a rare occurrence in the legal industry, it is a testament to Tim's strong level of loyalty and commitment.

Cristine K. Huffine

Partner

Cristine Huffine represents employers, professional employment organizations, insurance companies, servicing agents and self-insureds in workers' compensation claims ranging from minor injuries and occupational diseases to more significant, catastrophic matters with complex medical implications. Her clients include small businesses and Fortune 500 companies alike, including national retailers, restaurants, food and beverage companies, and trucking and logistics services, as well as various school board associates and governmental entities.

Cristine regularly defends clients in multimillion dollar claims, leveraging her extensive experience and a deep understanding of the medical issues at play to obtain favorable results for her clients. In one catastrophic brain injury matter, for example, she negotiated a settlement for more than $1 million less than the original claim.

Cristine collaborates with clients to identify effective and efficient solutions with a focus on the client's business goals and bottom line. Whether positioning the client for a favorable settlement negotiation or aggressively litigating a claim before an administrative law judge (ALJ), she serves as a trusted business partner when identifying creative solutions for complex disputes.

Cristine's personal and professional experience empowers her with an in-depth understanding of the medical and business considerations involved with workplace injury claims. Cristine effectively works with physicians to develop a full understanding of a claim, including everything from basic to highly specialized injuries. Before entering law school, Cristine worked various jobs in the restaurant and retail industry, which lends her a holistic perspective of her clients' operational practices when considering legal issues.

Prior to joining Swift Currie, Cristine practiced at other major national law firms with offices in Atlanta, focusing on employment and labor law, as well as environmental law. Cristine also practiced in Pennsylvania, where she participated in a precedent-setting products liability case. She previously served as a law clerk for the Honorable Sheryl Ann Dorney for the Court of Common Pleas in the 19th Judicial District in York, Pennsylvania. As a law clerk, Cristine authored several opinions that were published, including an opinion involving a major snack food corporation embroiled in a family battle over ownership rights. While in law school, she interned at the Pennsylvania Attorney General's Office in the Tort Litigation Section.

Cristine is an active leader in her legal specialty. She served as the chair of the Legislative Committee for the Atlanta Claims Association and is a member of and frequent speaker for the National Association of Professional Employer Organizations (NAPEO). She has also been a speaker with the Claims and Litigation Management Alliance (CLM). Additionally, Cristine frequently presents at in-house training sessions for risk managers.

James D. Johnson

Partner

Jim Johnson represents businesses, insurance carriers and individuals in litigation matters related to personal injury claims and in workers' compensation claims ranging from minor to catastrophic injuries. Jim has diversified his practice over his 20-year career to include counseling clients in complex liability matters, including automobile accidents, premises liability and other wide-ranging business challenges like cybersecurity.

Jim's clients are businesses from across the spectrum of industries, including national insurance companies and large school districts.

Prior to entering law school, Jim spent several years working as a vocational rehabilitation counselor and vocational expert, including an in-house position at an insurance company managing vocational rehabilitation files. He manages complex workers' compensation claims by using the knowledge he gained from his previous roles providing expert testimony in disability cases, performing job analyses to get injured employees back to work and even attending doctor appointments while acting as a liaison between employers and injured claimants.

Jim puts his clients at the center of each case he handles, ensuring they are well informed, and he develops legal strategies with their individual goals in mind.

Jim's broad experience enables him to provide one-stop service to his clients in need of counsel in both workers' compensation claims and liability defense. His extensive knowledge and background working with the legal issues and complex medical considerations in these cases provides him a masterful understanding of the facts in a claim and gives his clients an upper hand.

Cabell D. Townsend

Partner

Cabell "Cab" Townsend is a partner with Swift Currie and has been defending self-insured employers, insurers and third-party administrators in workers' compensation matters since 1998. His clients include companies in the agricultural, warehousing, trucking, logistics and manufacturing industries.

Cab has more than 20 years of experience handling all aspects of workers' compensation matters. He is skilled at taking depositions, meeting with employers to help them navigate the complexities of a case, defending clients at administrative hearings, handling mediations and all aspects that come with a case. He guides his clients through the legal process, ensuring they feel comfortable and are in the very best position to make an informed decision.

Cab believes in collaborating with his clients to design effective and cost-efficient strategies to obtain their legal objectives. He gets to know each client, understanding their business and their long-term goals and he ensures clear and transparent communication so his clients are empowered to make informed choices based on the realities of their case.

In addition, Cab works diligently to develop productive relationships with all parties in his cases, which ensures efficiency in case handling and the best possible outcomes for his clients.

Over the years, Cab has become well versed in all the rules and regulations of the Georgia State Board of Workers' Compensation. He educates his clients on how to train their employees in order to avoid issues and mitigate risk. He also speaks regularly at client seminars, answering questions and presenting topics to help his clients understand workers' compensation issues and challenges.

Todd A. Brooks

Partner

Todd A. Brooks is a Swift Currie partner who focuses his practice on workers' compensation matters. His clients include national manufacturers, "mom-and-pop" businesses and school systems, as well as city and county governments. In addition to handling client matters, he provides advice to organizations on how they can minimize exposure, mitigate legal risk and better position their businesses to reduce liability.

Todd has handled more than 20 jury trials and over 250 bench trials and hearings before Georgia courts and the State Board of Workers' Compensation. He has also argued before the Georgia Court of Appeals and the Georgia Supreme Court.

Todd's previous experience as a prosecutor brings a unique perspective to his practice. Not only does his experience give him the ability to effectively handle several cases simultaneously and think on his feet, it helped him hone his ability to create winning strategies by exploring different tactical avenues. He prides himself on handling matters in a thoughtful manner in order to devise creative solutions to clients' problems.

Todd also teaches a workers' compensation course at Georgia State University College of Law and regularly speaks on legal issues. In addition, he is a co-author of the *Georgia Workers' Compensation Law and Practice* book, which is updated annually.

Charles E. Harris, IV

Partner

Chad Harris has successfully represented employers and insurance providers in workers' compensation claims exceeding $75 million in exposure during his 18-plus years of experience in the field. Chad assists businesses in navigating overarching risk management challenges, structuring and creating risk control procedures, and providing aggressive and cost-effective defense-of-litigation counsel.

Chad represents a wide range of clients in state, federal and appellate proceedings, including large national banks, big-box retailers, industrial warehouse and logistics companies, staffing and professional employer organizations and some of the largest insurance companies in the United States.

He has also counseled businesses and individuals regarding significant medical claims, such as extensive brain injuries, burns and orthopedic injuries, among other challenging situations.

In addition to his experience as an attorney, Chad leverages a background in accounting for a holistic understanding of his clients' business needs and liability issues.

He is active in the national American Staffing Association and National Association of Professional Employer Organizations and frequently attends legislative meetings in Washington, D.C., to lobby on behalf of his clients.

Michael Rosetti

Partner

Mike Rosetti defends insurers and self-insured businesses in workers' compensation claims. He has successfully resolved through litigation or settlement more than 1,000 claims on behalf of clients. Mike represents clients across a broad spectrum of industries, from manufacturing and forestry to retail and logistics. His clients range from some of the most recognizable Fortune 500 company names to small businesses throughout the state.

Mike's extensive experience navigating challenging workers' compensation claims enables him to provide the most effective solutions in the most complex of matters. He has tried cases before more than a dozen administrative law judges and argued cases before the Georgia Court of Appeals and the Supreme Court of Georgia.

Mike works closely with his clients to ensure they are informed and educated on all matters related to their cases so they can make the best decisions when determining how to proceed.

Well known for his communication skills, Mike has held positions of leadership in the insurance and legal industries. He is highly engaged as a leader with a number of professional organizations. He serves on the board of directors for the Atlanta Bar Association Workers' Compensation Section, is a member of the Legal Steering Committee of the Georgia State Board of Workers' Compensation and a Fellow of the College of Workers' Compensation Lawyers. He is a past co-chair of the Institute of Continuing Legal Education in Georgia – Workers' Compensation Law Institute and has spoken at more than 50 professional and trade association conferences.

Mike's leadership extends to pro bono and charitable work, including his work with Kids' Chance of Georgia, an organization that provides scholarship awards to children whose parents have been injured in work accidents. He is the past chair of the organization's most profitable fundraising dinner and silent auction. He also serves on the board for Holiday Helping Hands, which provides holiday cheer for children whose parents have been injured in industrial accidents.

S. Elizabeth Wilson

Partner

S. Elizabeth "Beth" Wilson defends employers, insurers and self-insureds in workers' compensation matters ranging from minor to catastrophic injuries.

She provides representation in all aspects of claim disputes, having handled hundreds of depositions, mediations, hearings and appellate arguments for her clients, which include national retail chains, food service providers and insurance carriers.

Early in her career, Beth served as staff counsel for an insurance company and gained extensive experience handling each aspect of claims management and hearings. Her in-house role expanded her perspective and informed her hands-on, responsive approach to legal service. She works closely with clients to identify and execute effective litigation strategies in line with their business objectives.

K. Martine Cumbermack
Partner

K. Martine Cumbermack is an experienced litigator with more than 20 years of legal experience. She has provided counsel and representation in workers' compensation matters on behalf of employers, insurance companies, self-insureds and third-party administrators in both Florida and Georgia.

Martine has extensive experience in trial and appellate courts, including establishing a clearer precedent at the appellate level in defending death claims in Georgia. She has successfully litigated workers' compensation cases at trial on various issues, including the *Rycroft* defense, notice and intoxication defenses.

A trusted adviser to her clients, Martine counsels them on the best way forward with their unique legal issues. She focuses on providing great accessibility to answer any questions or discuss ideas with clients, even when she is not working an active case with them, to ensure she is always available to troubleshoot problems or advise on issues they may be facing. Martine also assists clients with in-house training for employers to help mitigate risk ahead of issues in order to arm businesses with the knowledge to make smart decisions before incidents occur.

Martine holds a diversity and inclusion professionals certificate through Cornell University's Institute of Labor & Relations. She serves as a co-chair for the firm's Diversity Committee and represents the firm as a member of the Steering Committee of the State Bar of Georgia Diversity Program. Martine has also served on the firm's Technology, Hiring, Marketing and Community Relations committees.

Before joining Swift Currie, Martine served as outside panel counsel and in-house counsel providing workers' compensation defense for a major national insurance company. She has taught as an adjunct professor at the undergraduate and law school levels on subjects, including trusts and estates, workers' compensation, criminal and civil procedure. She previously litigated cases as a public defender and served as a court-appointed Guardian Ad Litem.

Martine has become an industry leader, regularly writing and presenting locally and nationally on a wide variety of workers' compensation topics ranging from employer affirmative defenses, light duty return to work issues, post-hire medical questionnaires, the role of aging employees in workers' compensation and the impact of diversity on claims management, costs and results.

R. Alex Ficker

Partner

R. Alex Ficker represents employers, insurers, self-insurers and third-party administrators in workers' compensation matters, including handling claims before the State Board of Workers' Compensation in Georgia and appellate courts across the state. He provides proactive counsel to ensure his clients' businesses are prepared when there is a workplace injury. He navigates clients through effective legal strategies to ensure success in workers' compensation challenges, including litigating claims, negotiating favorable settlements, advising in investigations and conducting ongoing compliance training for managers and supervisors to understand requirements under the Workers' Compensation Act in Georgia.

Alex's clients range from small mechanic shops to Fortune 500 companies, and he represents businesses across a wide range of industries, including fast food restaurants, grocery store chains, concrete manufacturers, big box retailers and more.

Alex has amassed significant experience in his 13 years of counseling clients on workers' compensation matters and has handled claims valued in the seven-figures.

Knowing that workers' compensation law can seem like its own language, Alex leverages significant prior experience working in the medical field to serve as an effective translator of medical information and legal jargon to ensure his clients fully understand their case, empowering his clients to feel comfortable and included in determining the best legal approach for their business.

Alex provides a hands-on approach in his client service, including site visits as a part of claims investigations to ensure he meets the different parties involved in the case. Through this emphasis on creating and maintaining relationships, his clients benefit from a holistic perspective on matters that include effective two-way communication.

In addition to his extensive experience, Alex ensures he is up-to-date on the latest developments in workers' compensation law. Within the firm, he has served in roles on the firm's annual workers' compensation seminar, internal education committee and client alert committee responsible for alerting clients to important legislative and case law updates.

K. Mark Webb
Partner

K. Mark Webb is a Swift Currie partner who focuses solely on workers' compensation law representing insurance companies, self-insured employers and third-party administrators in the defense of workers' compensation claims.

Mark has particular experience with large retailers, temporary staffing companies, professional employer organizations, manufacturers, food and beverage companies, commercial and residential service companies, emergency medical service companies, transportation companies, construction companies, auto dealerships, municipalities and Georgia's growing entertainment industry.

Mark has handled hundreds of workers' compensation cases in his career, developing long-term relationships built on trust and delivering successful outcomes. His application of time-honored best practices helps put stress at bay, enabling clients to feel more relaxed and better focused on sound strategies for resolution.

With a straight-forward approach, Mark is diligent in the preparation of his cases, paying keen attention to precise detail and subtle nuances that, when properly observed, can signal success or the opposite: pitfalls. His exacting approach closes the door on gaps for error, leading to successful outcomes.

Mark understands that working for clients is a privilege, and privilege carries the responsibility of serving clients in a steadfast and attentive manner, always focusing on the matters at hand to represent best interests and provide leadership that inspires confidence and success.

Preston D. Holloway
Partner

Preston Holloway defends workers' compensation claims on behalf of employers, insurers, self-insureds and third-party administrators throughout Georgia.

For more than 10 years Preston has represented clients in the insurance, construction and quick-service restaurant sectors. He is also experienced in handling workers' compensation challenges that are unique to staffing agencies. For example, he works with those whose employees can disproportionately hail from troubled backgrounds, who lack training needed to meet heavy-duty job requirements and who receive insufficient supervision.

Preston advises clients to manage risk and resolve disputes in a quick and economical manner, including weighing the costs of litigation against posturing for a favorable settlement. He is experienced in all phases of dispute resolution, having deposed a wide range of witnesses, including medical professionals. In addition to defending claims at the hearing level, he also realizes the value that alternative dispute resolution can have in certain matters.

Before beginning his legal career, Preston studied broadcast journalism and honed many of the skills necessary to effectively understand and litigate workers' compensation claims, including investigation, research and the ability to leverage that information to communicate a compelling narrative.

His priority is to positively position his client in the legal matter, and to that end, he ensures they are well-informed throughout the case to best understand their legal options.

Preston brings a service-oriented approach to his practice, providing adaptive and organized legal counsel in the most challenging of cases.

Amanda M. Conley

Partner

Amanda Conley is a knowledgeable defense attorney with vast experience representing employers and insurers in workers' compensation matters.

She litigates claims on behalf of her clients, which include the largest insurance company in the Southeast and companies in the hospitality, tree service, cable, utility, ride sharing, manufacturing, furniture sales and construction industries.

Amanda has successfully settled or mediated hundreds of cases and prepared countless depositions over the last 10 years. She also routinely attends hearings on behalf of her clients. She has experience with cases involving fraud where she investigated and gathered evidence to prove fraud was committed and sought restitution on behalf of the employer and insurer.

Amanda is a zealous advocate for her clients and uses knowledge from her deep experience and prior work as a claimant's attorney to diligently pursue their desired goals.

Marion H. Martin

Partner

Marion Handley Martin counsels employers, insurers and self-insureds at all levels of workers' compensation claims throughout the state of Georgia. She has defended clients in thousands of matters, including claims ranging from minor workplace injuries to catastrophic injuries and death claims. She is also experienced in counseling clients in the pursuit of subrogation interests and reimbursement from the Subsequent Injury Trust Fund and has appellate experience before the Court of Appeals of Georgia and the Supreme Court of Georgia.

Marion is experienced in handling workers' compensation claims for clients in a wide range of industries, including restaurant and hospitality, health care management, auto manufacturers, mass transit services, retail, large national insurers and third-party administrators.

Marion works closely with clients to identify the most effective and pragmatic resolution in a dispute, whether negotiating a settlement or litigating for a favorable conclusion.

Informed by her extensive experience navigating challenging workers' compensation claims, Marion remains at the forefront of thought leadership in her field. She frequently writes and speaks on workers' compensation law and was previously a co-author of the *Mercer Law Review*'s Annual Survey of Workers' Compensation Law.

Marion is proficient in French and also speaks some Portuguese.

Mark E. Irby

Partner

Mark E. Irby has more than 10 years of defense experience. Mark handles workers' compensation matters on behalf of his clients for two states (Alabama and Georgia), which include employers and insurers in various industries such as, staffing, construction, restaurants, transportation, school boards, health care and many more.

Mark has successfully defended numerous cases before administrative law judges and Georgia's State Board of Workers' Compensation, and has a vast amount of experience dealing with workers' compensation claims where fraud is suspected. He looks for the "red flags" in the case and uses his extensive experience and a deep bench of experts in his professional network to resolve the issue to a successful conclusion. Mark also has experience asserting his position on cases before the State Board Appellate Division, Georgia Court of Appeals and Georgia Supreme Court.

Mark defends workers' compensation claims for employers and insurers in Alabama and Georgia and helps employers and insurers understand the nuances between the laws of each.

Mark knows his clients' legal matters are not their only focus and he ensures that he communicates efficiently, getting to the bottom line and solving their issues without overburdening them. Mark listens to his clients' needs and adds his valued legal expertise to devise a creative strategy to achieve their legal goals.

Mark values his client relationships and strives to be a reliable business partner to help them tackle any legal concerns or issues facing their businesses.

Mark credits his parents with teaching him the value of hard work and dedication at an early age, and he believes that outworking his clients' opponents will always put them in the best possible position. Mark has tried many cases and left no stone unturned in these matters. This persistent mindset has served his clients well as an aggressive advocate on their behalf. He believes there is always a way to win a case, and with perseverance, he will get the best outcome.

Carl "Trey" K. Dowdey

Partner

Carl "Trey" K. Dowdey, III, represents employers, insurance providers and claims professionals in various workers' compensation cases throughout Alabama. Trey also defends employers against retaliatory discharge and co-employee liability claims, and handles automobile and premises liability defense litigation.

Trey has experience trying civil jury and bench trials and presenting oral argument to the Eleventh Circuit Court of Appeals. He is also a member of the Judge Advocate General's Corps with the U.S. Army Reserve and the commander of the 139th Legal Operations Detachment. Previously, he commanded the 10th Legal Operations Detachment and was the staff judge advocate for the 412th Theater Engineer Command, serving as the senior legal adviser to a two-star general.

Trey has tried dozens of workers' compensation cases and won several defense verdicts, saving clients in excess of $750,000 of alleged damages or workers' compensation benefits in some matters. Additionally, Trey has argued numerous motions in open, federal and bankruptcy court.

Trey has prosecuted dozens of courts-martial cases while on active duty and managed hundreds of administrative separation boards. He has taken hundreds of depositions of plaintiffs, witnesses and doctors.

In addition to his extensive litigation experience, Trey was selected for promotion to the rank of colonel in the U.S. Army Reserve. His experience in the U.S. Army Reserve further elevates his ability to communicate with clients and senior business leaders in a clear and concise manner in order to better understand their business objectives and legal needs.

Previously, Trey served as vice-chairman of the Alabama State Bar Military Law Committee, and he has served on the committee for more than 11 years.

Crystal Stevens McElrath

Partner

Crystal Stevens McElrath practices workers' compensation defense as well as employment law defense and counseling, specializing in disability and leave laws. She regularly advises, trains and defends clients related to wage and hour, discrimination and human resource laws.

Crystal represents clients in a number of industries including food sales, medical transport services, counseling and staffing.

She also handles numerous workers' compensation matters; Equal Employment Opportunity Commission (EEOC) charges of age, racial and religious discrimination; Fair Labor Standards Act (FLSA) overtime and minimum wage cases; unemployment claims; Family Medical Leave Act (FMLA) lawsuits; drafting of employee handbooks; conducting internal audits; and negotiating employment contracts.

Crystal has successfully tried more than 85% of her litigated cases in favor of the employers and insurers she has represented. She has also successfully defended four appeals. Twice, Crystal co-authored amicus briefs to the Supreme Court of Georgia on a question of which workers' compensation statute of limitations applied for claims involving statutory penalties for late indemnity payments. Crystal also co-authored a brief to the Georgia Court of Appeals on the question as to whether medical benefits constitute "compensation" such that payment for medical treatment would trigger the status of limitations for controverting workers' compensation claims.

Crystal's method of thought and mindfulness is highly influenced by her unique perspective developed while studying at Emory University's Center for the Study of Law and Religion. She simultaneously studied law and theology, creating a system of thinking that taught her to deeply examine the meanings of intersections. For clients, this means decisions are always balanced in consideration of business and the personal concerns attached to all outcomes. Crystal seeks a balanced and highly personalized solution for each case, which also drives strategies that balance the client's legal needs with their business' success and profits.

C. Blake Staten

Partner

Blake Staten is a partner in the firm's workers' compensation practice area. He specializes in defending employers and their insurers in cases that involve significant bodily injury and high exposure.

Blake has a diverse client base that includes companies in the poultry processing, wholesale food distribution, trucking, appliance manufacturing, airport management and restaurant industries. He also has experience working with staffing agencies and automobile trade associations.

Blake understands the issues his clients face, which allows him to find efficient and cost-effective solutions to their problems. He works with clients to develop the best legal strategy for proactive claims handling.

Blake is experienced in handling matters invoking key workers' compensation laws, such as the Civil Practice Act, the Workers' Compensation Act and applicable case law, which allows him to defend cases of various types and sizes.

Joanna S. Jang

Partner

Joanna S. Jang practices primarily in the area of workers' compensation defense representing employers, insurers, self-insureds and third-party administrators in equipment rental, construction, property and hotel management, manufacturing, retail and landscaping industries before the State Board of Workers' Compensation and all appellate courts in Georgia. Joanna also has extensive experience handling federal and state business and commercial litigation cases.

Prior to joining Swift Currie, Joanna also handled federal and state subrogation matters. Fluent in Korean and conversational in Japanese, her language skills give her insight into two distinct cultures, enabling her to work with business leaders from these and other Asian communities.

In addition to Joanna's defense experience, she frequently writes and presents on a variety of workers' compensation issues, including light duty return to work and defense strategies, among other topics. She stays abreast of legal changes affecting workers' compensation in order to ensure that her clients are knowledgeable on all aspects of their legal issues.

Joanna also frequently presents on workers' compensation-related issues in Korean to Korean business owners and serves on the board of directors for the Korean American Chamber of Commerce of Georgia, as well as The Korean American Association of Greater Atlanta. She is a former member of South Korea's National Unification Advocacy Council, which advises the nation's president regarding policy development and implementation for peaceful unification of South Korea and North Korea. The group's members are appointed by the president of South Korea.

Joanna understands that both international affairs and workers' compensation matters are complex and stressful for business leaders as well as clients. She is always working to achieve her clients' legal objectives, and she mitigates their stress by minimizing defense and litigation expenses as much as possible.

Jon W. Spencer

Senior Attorney

Jon W. Spencer handles complex litigation on behalf of employers to help them control workers' compensation costs by defending against fraudulent claims and facilitating legitimate ones. He has experience with the Georgia Workers' Compensation Act and the State Board of Workers' Compensation.

Jon has high-level experience handling large volumes of appeals to the Court of Appeals of Georgia and dozens of cases at the administrative law judge (ALJ) level. He has handled a wide range of uniquely challenging cases, including the closing of extensive and costly workers' compensation claims that had been open for years, usually involving Medicare Set-Asides and various liens.

Jon actively pursues highly successful and cost-saving outcomes for his clients, providing executive counsel and coaching that inspires confidence and minimizes stress. His years of combined experience lend agility to his legal acumen, enhancing his knowledge and capacity to successfully navigate the complexities of workers' compensation legislation and administrative rules.

Before joining Swift Currie in 2007, Jon served as the assistant attorney general for the Missouri Attorney General's Office, representing the state and Second Injury Fund. He also practiced insurance and workers' compensation defense in Missouri and Illinois.

Jeremy R. Davis

Senior Attorney

Jeremy R. Davis has more than 15 years of experience defending employers, insurers and third-party administrators in workers' compensation claims and advising on matters related to injury prevention and proper procedure immediately after a work-related accident.

His clients include staffing companies and professional employer organizations and he handles appeals from the Appellate Division of the State Board of Workers' Compensation to the Supreme Court of Georgia.

He has given numerous presentations and written several articles discussing issues affecting workers' compensation claims, including fictional new injuries, the exclusive remedy provision and Medicare Set-Asides.

Jeremy's commitment to his clients' success extends beyond individual claims and litigation. He focuses on maintaining strong relationships to serve as a trusted partner to mitigate future incidents and liability.

Traci D. Teer

Senior Attorney

Traci D. Teer is a senior attorney practicing workers' compensation defense at Swift Currie, guiding employers, insurers and third-party administrators through complex medical issues impacting work status and multiple injury claims.

For more than 20 years, Traci has worked with her clients throughout all stages of the workers' compensation process, from the initial report of an accident through settlement and/or trial before administrative law judges. She began trying cases at the outset of her legal career and has represented clients before the Appellate Division of the State Board of Workers' Compensation, state and superior courts throughout Georgia and the Court of Appeals of Georgia.

Traci possesses extensive experience bringing costly workers' compensation claims to a conclusion, providing a step-by-step process to give her clients a clear view of where the claim is heading. Recognizing every client is different, Traci commits to tailoring her approach to defending each client and takes care to learn its business goals, needs and concerns in order to foster a collaborative relationship and craft a strategy to limit costs and exposure. She strives to provide excellent representation for every matter and believes there is no substitute for a well-prepared defense.

Traci is active with Kids' Chance of Georgia, Inc., a charitable organization providing educational scholarships to children of Georgia workers who were fatally or catastrophically injured on the job. She also serves as co-chair of the annual ICLE Dinner and Silent Auction.

Todd S. Boyce

Senior Attorney

Todd S. Boyce is a senior attorney practicing in Swift Currie's workers' compensation section, bringing nearly 20 years of litigation experience to his clients' defense strategies. He represents businesses in the fields of manufacturing, logistics, sales, consumer goods and insurance throughout all phases of a workers' compensation case, from commencement of litigation through trial, appeal and dispute resolution.

Over the life of his career, Todd has handled millions of dollars' worth of claims. Furthermore, he has successfully advocated on behalf of more than 1,000 clients before administrative boards, municipal courts, state courts, superior courts and appellate courts.

Todd has occupied a variety of positions throughout the courtroom. He previously served as a judge, hearing more than 10,000 cases, evaluating evidence, making rulings and managing a significant caseload. He also spent over five years as a trial prosecutor, during which time he appeared in court on an almost daily basis. In addition, he is often called upon as a court-appointed expert, and conducts investigations and interviews witnesses to develop an opinion on a case. Todd's clients benefit from this unique blend of experience, which gives him well-rounded insight into the best method to achieve their desired goals and outcomes.

Todd prioritizes keeping his clients both well informed and regularly informed to ensure they have a comprehensive understanding of the matters at hand. He believes in the importance of setting a plan and strategy early on and revisiting that strategy often to adapt to new circumstances.

An active member of Georgia's legal community, Todd frequently speaks at conferences, including the State Board of Workers' Compensation Annual Educational Conference. He is also an adjunct professor at Emory University School of Law, where he teaches law students pre-trial litigation and oral argument techniques.

Gail S. Pursel

Senior Attorney

Gail S. Pursel brings more than 25 years of experience to Swift Currie as a senior attorney representing employers and insurers in workers' compensation claims. Her clients benefit from her wealth of experience handling hundreds of mediations, hearings and appellate arguments throughout her career.

A dedicated advocate, Gail provides personalized and effective client service and always maintains an open line of communication. She keeps her clients updated throughout the course of a claim and is committed to addressing any concerns and questions they may have.

For over 10 years, Gail taught various legal subjects as an adjunct professor at the undergraduate level. Additionally, she is a Fellow in the Lawyers' Foundation of Georgia, which recognizes those individuals whose public and private careers demonstrate outstanding legal abilities and devotion to their communities.

Gail earned her J.D. from the University of Georgia School of Law. Prior, she received her B.A. in political science and a certificate in global studies from the University of Georgia.

Marc E. Sirotkin
Associate

Marc E. Sirotkin represents employers and insurance carriers as an insurance defense attorney handling workers' compensation claims.

He serves a range of large businesses, including insurers, airlines, consulting firms, retail stores, electronics manufacturers and technology companies, newspapers, packaging companies, automobile auction companies, nursing homes, environmental design firms and more.

Marc's practice has expanded and grown in scope beyond workers' compensation through the years to include an ancillary practice — handling recovery of client judgments through the garnishment process and protecting judgments in bankruptcy court. Most recently, he has helped clients with matters of catastrophic claims, subrogation, collections, bankruptcy issues and employer/insurer claims.

Swiftly responding to clients, listening carefully and validating their needs with informed responses, Marc is always ready to discuss precision strategies and solutions.

Prior to joining Swift Currie, Marc handled domestic relations and general civil litigation matters.

Katherine S. Jensen
Associate

Katherine Soublis Jensen represents insurers, self-insured employers and third-party administrators in defending workers' compensation matters throughout Georgia. Katherine has defended numerous claims on behalf of staffing agencies, retailers, hotels, restaurants, manufacturers, nursing facilities, transportation companies and construction companies. Representing a wide range of clients, from small family-owned companies to multibillion-dollar corporations, she works to ensure that her clients' rights are protected.

Katherine also handles subrogation litigation against third-party tortfeasors in state and superior courts. She has significant experience handling all aspects of litigated and non-litigated cases, including cases at the appellate level.

Whether handling a small workers' compensation claim or one worth hundreds of thousands in exposure, Katherine ensures that employers have a valid posted panel of physicians and that they understand their rights under the Georgia Workers' Compensation Act.

Katherine also defends claims involving willful misconduct, aggravation injuries, idiopathic injuries, catastrophic injuries and injuries involving complex neurological and psychiatric issues.

As a first-generation American and the daughter of small-business owners, Katherine has first-hand experience and understands the concerns of employers can be both monetary and personal.

Katherine's personal experiences have taught her the value of hard work and dedication, and this understanding of tireless advocacy and commitment to her clients has propelled her success in the legal industry.

Before joining Swift Currie in 2011, Katherine served as an assistant district attorney for in DeKalb County under the Georgia Third-Year Practice Act. She graduated, *cum laude*, from the University of Georgia School of Law and, *magna cum laude*, from the University of Georgia.

Emily J. Truitt
Associate

Emily J. Truitt represents employers in workers' compensation claims, whether advising clients in negotiations to settle a case or litigating on their behalf in the courtroom. Her client advocacy includes a strong ability to balance her clients' viewpoints with the best interests of their businesses.

Emily represents clients in the restaurant, hospitality, construction, health care, staffing, manufacturing and retail industries, as well as franchisees.

A strong communicator, Emily makes every effort to know all the players in the industry, from opposing counsel to other defense attorneys and judges. She leverages these relationships to best represent her clients and achieve their legal objectives.

Understanding how companies can suffer from abuse of workers' compensation benefits, Emily brings compassion and sensitivity to her work with her clients.

Emily was included in the inaugural edition of the Best Lawyers: Ones to Watch for her work in workers' compensation.

Jonathan G. Wilson
Associate

Jonathan G. Wilson defends clients in workers' compensation claims, representing employers, insurers, self-insureds and third-party administrators throughout Georgia. In addition, he represents employers as garnishees in garnishment proceedings.

Jonathan handles all aspects of workers' compensation claims, including advising employers on workplace procedures prior to claims arising and helping his clients create policies and manuals that provide consistent guidance for managing workers' compensation matters. He also handles appeals and cases before Georgia's State Board of Workers' Compensation.

Jonathan goes the extra mile, inspiring trust with an integrated and disciplined approach when advising clients on matters related to workers' compensation defense and garnishment proceedings. Every problem is paired with a solution to promote and protect the clients' best interests.

Prior to law school, Jonathan worked as a paralegal in Savannah, Georgia.

Dustin S. Thompson

Associate

Attorney Dustin S. Thompson exclusively represents employers, self-insurers, insurers and third-party administrators in workers' compensation claims. Dustin was raised in rural Camilla, Georgia and worked several jobs, from a watermelon farm to a policy think tank, before becoming an attorney at Swift Currie.

Dustin has represented a wide spectrum of employers throughout Georgia in workers' compensation claims, ranging from mom-and-pop businesses to Fortune 500 companies. He has experience representing employers and insurers in the construction, retail, restaurant, sanitation, manufacturing, trucking, farm and food processing industries to name a few. The years of experience, relationships and knowledge garnered through helping those diverse clients successfully litigate and deal with either their first workers' compensation claim or their 1,000th claim has allowed Dustin to develop an effective and successful workers' compensation defense practice.

Benjamin D. McClure

Associate

Benjamin "Ben" D. McClure is an associate with Swift Currie who concentrates his practice in the area of workers' compensation defense. His clients include insurance companies, self-insured companies and servicing agents.

Thanks to his legal experience, Ben successfully protects his clients from those seeking to take advantage of them and the workers' compensation system. In addition, Ben has a well-rounded legal perspective that helps him find unique solutions to clients' problems and communicate with them in a relatable way.

Prior to joining Swift Currie, Ben worked as a prosecutor and criminal defense attorney, which helped him hone his skills as a fierce advocate for his clients. While working as a prosecutor, he participated in the prosecution of major felony crimes, including jury trials, where he expanded his trial skills.

Tara P. Schlairet

Associate

Tara Peterson Schlairet is an associate in the firm's workers' compensation practice area. She counsels employers and insurers through sensitive issues, claims and employment-related concerns.

Clients face a myriad of issues when they are involved in a workers' compensation claim. Putting clients' best interests at the forefront, Tara guides each client through legal options and nuanced decision-making that leads to best outcomes.

Balancing an aggressive defense perspective against frivolous claims, Tara honors the inherent value of reaching resolutions through collegiality and cooperation. Her approach is client-centric and cultivates integrity in all relationships, leading to favorable and cost-effective results.

Prior to joining the firm in 2018, Tara represented the interests of employers, insurance companies and servicing agents in all aspects of Florida workers' compensation claims.

Pearce W.J. Taylor

Associate

Pearce W. J. Taylor zealously represents employers and insurers in all aspects of Georgia workers' compensation claims.

Pearce is a graduate of the State Bar of Georgia Young Lawyer's Division Leadership Academy.

While in law school, Pearce interned with the Jacksonville (Florida) Ethics Commission. He also received book awards in four classes and was a member of the Moot Court Honor Board, having participated in four national competitions as part of the first-ranked moot court team.

Christopher L. Beerman

Associate

Christopher L. Beerman is a Swift Currie attorney practicing workers' compensation defense.

Christopher works closely with employers to control costs and provide effective representation throughout the workers' compensation claims process, including document review and summary, corresponding with all parties, conducting depositions, attending mediations, negotiating settlements and going to trial.

Previously, Christopher served as the sole staff attorney for Hon. John H. Bailey, Jr., Hon. Jeffery Malcom and Hon. Thomas L. Hodges in the Georgia Superior Courts, Northern Circuit. After that, he served as an assistant solicitor-general and assistant district attorney for the Columbus Consolidated Government. In those roles he worked with local law enforcement agencies and the offices of all the judges in the Chattahoochee Circuit, which allowed him an inside look at the workings of local government in Georgia's second biggest city. Christopher and his wife then moved to the Atlanta area where he joined a criminal defense firm.

Christopher's previous work provided him extensive experience preparing and presenting cases for trial. Additionally, he utilizes his attention to detail and ability to develop a positive rapport with others throughout every stage of the claims process to achieve the best results possible for his clients. He emphasizes extensive preparation along with open and direct communication in order to build trusting relationships.

Having lived abroad, Christopher is reminded of the wealth of experiences other people and cultures possess. He believes this world view is invaluable in situations where he is representing the interest of others.

Christopher stays active in the legal community as the vice-chair for media relations of the Georgia Association of Criminal Defense Lawyers and served as president of the Columbus Bar Association Young Lawyers Division from 2017-2018.

M. Brandon Rosenstein
Associate

M. Brandon Rosenstein practices workers' compensation defense. Prior to joining the firm, Brandon began his legal career at Swift Currie as a summer associate.

Brandon effectively represents his clients by strategically examining each claim and keeping his focus on the end goal. He understands the importance of taking a look at the big picture and ensuring the right moves are made to achieve his clients' overall desired outcome.

Brandon earned his J.D., *cum laude*, from Mercer University School of Law. While attending law school, he served as both a member of and the chair for the Mercer University ABA Negotiations Team and, upon graduating, returned to coach the team. He is also an alumni member of the Fellowship of Adolescent Mentors, a Mercer University organization dedicated to fostering educational opportunities for Macon's local youth to make certain the city's public-school students are equipped to learn each year. Additionally, Brandon was a member of Phi Delta Phi, an international legal honor society.

Davis M. Kimball
Associate

Davis Kimball practices in Swift Currie's workers' compensation section, zealously defending the rights of employers and insurers in workers' compensation disputes throughout the state of Georgia. He joined Swift Currie after handling workers' compensation matters for two years at a mid-sized insurance defense firm.

Davis is experienced handling workers' compensation cases from start to finish and has successfully obtained favorable results for his clients on numerous occasions through strategic settlement negotiations.

Under the Third Year Practice Act, Davis interned for the Newton County District Attorney's Office, where he conducted preliminary hearings, argued motions and participated in motion and status conferences concerning pleas, probation matters and constitutional matters.

Always thinking a few steps ahead, Davis is quick to adapt to any new developments while also viewing the situation from multiple angles to analyze potential outcomes based on varying circumstances. To ensure his clients have a full understanding of the matters at hand, Davis frequently communicates the tactical steps taken to limit the cases' exposure while advancing the cases toward settlement.

Davis earned his J.D. from the University of Georgia School of Law. Prior, he received his B.A. in political science from Samford University.

Spenser L. West

Associate

Spenser L. West defends insurers and employers against workers' compensation claims throughout Georgia. In particular, Spenser has experience representing the interests of school districts, construction companies, retailers and large construction projects.

Previously, Spenser practiced civil litigation defense, primarily working on complex civil litigation, class action lawsuits and internal investigations.

Spenser earned his J.D. from Vermont Law School and his undergraduate degree from Purdue University

Alexis N. Herring

Associate

Alexis N. Herring is an attorney practicing in Swift Currie's workers' compensation section, defending employers and insurers in workers' compensation claims throughout Georgia.

Prior to joining Swift Currie, Alexis practiced at an Atlanta law firm, protecting intellectual property for individuals in the entertainment industry and minority business owners. She also clerked for the U.S. Equal Employment Opportunity Commission where she conducted investigative and case law research for discrimination claims.

Recognizing that workers' compensation law is ever evolving, Alexis works closely with clients to keep them up to date on the latest changes in the industry and adapts defense strategies accordingly to bring about optimal resolutions.

Alexis is committed to her community and is active in a number of associations, including the Georgia Association of Black Women Attorneys and Georgia Association for Women Lawyers.

Alexis earned her J.D. from Georgia State University College of Law. During her time in law school, she served as president of the Sports and Entertainment Law Society and treasurer of the Black Law Students Association. Alexis received her B.A. in psychology from James Madison University.

M. Janie Jansen

Associate

M. Jane "Janie" Jansen is a Swift Currie attorney defending employers and insurers against workers' compensation claims throughout the state of Georgia.

Previously, Janie practiced on the claimants' side. She utilizes the insight she gained through this experience to craft effective defense strategies for her clients.

While in law school, Janie served as a law clerk for Governor Nathan Deal and his Executive Counsel. Additionally, she clerked for the Honorable Mark E. Walker of the U.S. District Court for the Northern District of Florida

Janie earned her J.D. from the University of Florida Levin College of Law, where she served as general editor of the *Florida Journal of International Law*. She received her B.A. in journalism from the University of Georgia.

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