



# JOHNS EASTERN COMPANY, INC.

Claim Adjusters & Third Party Administrators

**SPEED AND ACCURACY**

## FL BRACES FOR WC RATE HIKE

Although Florida's Workers' Compensation rates are historically among the lowest in the country, and are the lowest among major states, the approval of an 8.9 percent rate hike has sent shock waves through the industry. The increase will take effect on January 1, 2012. The National Federation of Independent Businesses of Florida contends that the rates are needlessly inflated by physician drug-repackaging costs, which critics say account for 2.5 percent of the proposed 8.9 percent increase. In light of this, the NFIBF proposed reducing the rate filing by 2.5 percent; however, the proposal was rejected by Florida's insurance commissioner. Business advocates plan to revisit the issue during the upcoming legislative session.

## WEBSITE UNVEILS SLEEK NEW LOOK

On September 12th, 2011, Johns Eastern Company, Inc. launched our new and improved website. With the implementation of our new website we hope to bring information and resources to you with greater Speed and Accuracy. Our new look and updated features will enable you to maneuver through our website with ease, providing a speedy and accurate browsing experience. Some of our new features include:

### Appearance

The website has undergone a total makeover and now has a revamped, updated look.

### New Client Log-In

New time-saving client login will list applications on the Home Page.

### Navigation Bar

A new navigation bar is positioned at the top of each page, making it easier to find your desired target.

### Locations/Contact Us

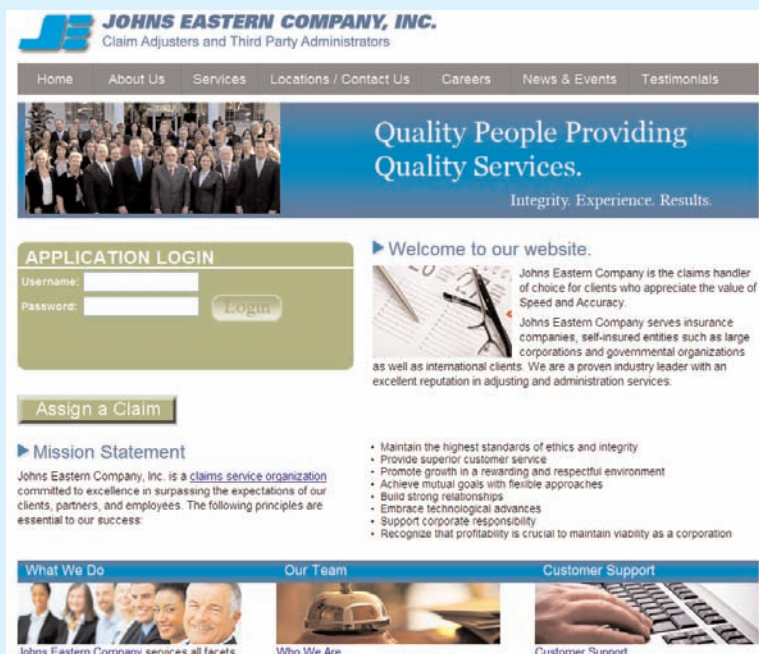
Our new "Locations/Contact Us" page has a navigation bar on the left-hand side with a listing of JECO locations for easy look up.

### Testimonial

A new Client Testimonial section has been added with feedback from our current clients.

We hope that our new and improved website will better fulfill the needs of our clients.

Contributor: Allison Stewart



### Page 2

Find out about the latest ruling on attorney fees

### Page 3

New statute affects traveling employees

### Page 4

Court rules against school board's prayer

## END OF THE ROLLER-COASTER RIDE OVER ATTORNEY FEES

We have all been on a roller-coaster ride since 2003 when the Florida Legislature passed amendments to the Workers' Compensation Act. The purpose of the amendments was to curb the rising premium rates paid by employers. The most prominent amendment has to do with attorney fees. We, on the employer side, were very excited about the change.



the changes in the 2003 statute, those other factors no longer needed to be considered. We compare this to reaching the bottom of the downward slide of a roller coaster! Yeah, we made it!

In October 2008 the Florida Supreme Court released their opinion in the Murray v. Mariners Health, 994 So 2d 1051 (FLA 2008) which reinstated carrier paid hourly fees to insure a "reasonable" fee in special cases. Now we headed back up the roller coaster, holding our breath, to see what would come next. In July 2009 the Florida Legislature passed another amendment which countered the Murray decision, taking us back down to the safe side of the roller coaster ride again!

The fee schedule for attorney fees ("benefits secured on behalf of a claimant") is on the following scale: 20% of the first \$5,000.00, 15% of the next \$5,000.00, 10% of the remaining amount secured to be provided during the first 10 years after the date the claim is filed, and 5% of the benefits secured after 10 years. Prior to 2003, there were several other factors to consider such as time and labor required, the difficulty of the case, customary fees in the area and many others. With

Then came the Kaufman v. Community Inclusions case. The JCC determined that a reasonable attorney fee would be \$25,075.00,

but based on the Statute, he could only award a carrier paid fee of \$684.41. The same firm that handled Murray also handled the appeal on the Kaufman case. The First DCA affirmed the Judge's order. The case was then appealed to the Florida Supreme Court. At that point we had no idea which direction the roller coaster was going to take. Recently the Florida Supreme Court refused to hear the case. At this point, the roller-coaster ride appears to be over and attorney fees are currently based on the Statutory formula.

Contributor: Nancy Riley



## IN REMEMBRANCE OF FORREST BRANSCOMB

Johns Eastern Company, Inc. would like to offer our deepest condolences to the family and friends of Forrest Branscomb, Director of Risk Management, for the School District of Manatee County. Johns Eastern cherishes the relationship we had with Forrest and would like to celebrate his memory by sharing some of his many accomplishments.



Forrest Branscomb was born on February 28, 1957 in Lynn, Massachusetts and relocated to Florida in the early 1980s. He earned his Masters in Public Health from the University of South Florida and later served his county in the U.S. Navy as a Lt. Commander in the Medical Corps. Forrest had been the Director of Risk Management for the School District of Manatee County since 1995. As

Director of Risk Management, Forrest oversaw the District's Employee Benefits Program, Property and Liability Insurance Program, Safety, Security, and Emergency Management. Throughout his career, Forrest held membership and contributed to many professional organizations, including FERMA; he also earned designations as a Certified Safety Professional (CSP), Associate in Risk Management (ARM), and Group Benefits Associate (GBA).

Forrest is survived by his wife of 13 years, Melanie Branscomb. He will be greatly missed by all who had the chance to know him. In memory of Forrest and his incredible work ethic we will finish with his favorite quote from Mr. Henry Ford, "If you think you can or if you think you can't... you are right."

# TRAVELING EMPLOYEES ARE LIMITED BY NEW STATUTE

In May of this year both the House and the Senate for the State of Florida passed a new law, 440.094, Florida Statutes, which substantially affects what benefits injured employees may be entitled to as a result of injuries that occur outside of the State of Florida. The bill was approved by Governor Scott on June 17, 2011 and went into effect on July 1, 2011.

This bill was primarily pushed by sports teams who have a significant amount of their employees traveling outside of the state. There are many other states within the nation that have workers' compensation benefits that are far more burdensome to employers. These companies lobbied the State to require under certain circumstances Florida workers' compensation law to be applied even if an injury occurs out of state. The bill shields employers from additional exposure when an employee is injured while working in another state.

The bill specifically holds that employees who work in another state for no more than 10 consecutive days or a maximum of 25 total days in a calendar year are considered to be temporarily working in that state. In addition, out-of-state employees who come to Florida and are injured while temporarily working in Florida are also exempted from receiving Florida workers' compensation

benefits and will receive benefits under the law of their home state if the following conditions are met:

1. The employer has furnished coverage under the workers' compensation law of the home state;
2. The extraterritorial provisions of 440.094 are recognized by that home state; and
3. Florida employees and employers are exempted from the workers' compensation laws of the employer's home state for injuries that occur of Florida employees that are temporarily working in that employer's home state.

While the wording of the statute does appear to be somewhat confusing and will likely lead to some significant litigation for injuries that occur out of state or in the State of Florida by an employee visiting from another state, the effect is really to provide employers some ability to predict what exposure they might have if an employee is injured in another state.

Under this law, employees of a Florida corporation who are injured while working in another state temporarily are entitled to only recover benefits under the Florida workers' compensation law. For employees of employers out of the State of Florida who are temporarily working in Florida, they are

not entitled to workers' compensation benefits under the Florida law but have to revert back to their own state's laws.

Because this law only affects employees who work for less than 10 consecutive days out of state and a maximum of 25 total days in a calendar year, there are only a few circumstances that this may actually be applicable to employers. For example, if you have an employee who consistently travels out of state several times a week or a month for the employer, this law may not apply to them because they would exceed the maximum of 25 days total in a calendar year. If, however, their travel does not take them out of the state for more than 25 days in a year, then this law would apply.

It may be beneficial to speak with an attorney with regard to how often your employees travel in order to ensure that this law will still apply to them. To the same effect any carrier who has an injured employee who was injured out of state, they will want to investigate how often that employee travels out of state, whether the true place of employment was Florida or another state in order to determine the proper forum for benefits. The intent of this statute was essentially to stop employees from shopping for the most favorable venue when they are injured out of state and dragging Florida companies across the country for litigation purposes.

If you have any questions regarding this new law, please do not hesitate to contact any of the attorneys at our office.

**Author: Barbi L. Feldman  
Vecchio, Carrier, & Feldman  
Attorneys At Law**



## SCHOOL LAW ALERT

### School Board Prayer Before Meeting Violates Establishment Clause

On August 3, 2011, the Third Circuit held in *Doe v. Indian River School District* (Case No. 10-1819) that the Indian River School District's ("Board") long-standing policy of opening its regularly scheduled meetings with a prayer violated the First Amendment's Establishment Clause. The Board argued in the case that it was similar to a legislative body and its prayer policy "is akin to the practice that was upheld in *Marsh v. Chambers*, 463 U.S. 783 (1983)." As the Third Circuit noted, the Supreme Court in *Marsh* determined that Nebraska did not violate the First Amendment's Establishment Clause by opening legislative sessions with a prayer. Ultimately, the Third Circuit refused to apply the *Marsh* exception and held, among other things, that the risk of coercion to support or participate in religion or its exercise is heightened in the public school context. The Court also reasoned that unlike a legislative body, the Board's entire purpose and structure revolved around public school education.



While the Third Circuit found against the Board other courts have sided with school districts. Thus, the constitutionality of prayer before school board meetings remains unsettled.

### United States Courts' Website on Landmark Student-Related Supreme Court Cases

The Administrative Office of the U.S. Courts publishes a website with information pertaining to landmark Supreme Court cases, including cases about students. The website is a valuable resource for anyone researching seminal cases in

education law. The site includes references to cases involving the following historic decisions:

- **Engel v. Vitale (1962)** - School initiated-prayer in the public school system violates the First Amendment;
- **Tinker v. Des Moines (1969)** - Students do not leave their rights at the schoolhouse door.
  - **Goss v. Lopez (1975)** - Students are entitled to certain due process rights;
  - **Hazelwood v. Kuhlmeier (1983)** - Administrators may edit the content of school newspapers;
  - **New Jersey v. T.L.O. (1985)** - Students have a reduced expectation of privacy in school;
  - **Bethel School District #43 v. Fraser (1987)** - Students do not have a First Amendment right to make obscene speeches in school;
  - **Santa Fe Independent School District v. Doe (2000)** - Students may not use a school's loudspeaker system to offer student-led, student-initiated prayer;
- **Board of Education of Independent School District #92 of Pottawatomie County v. Earls (2002)** - Random drug tests of students involved in extracurricular activities do not violate the Fourth Amendment;
- **Zelma v. Simmons-Harris (2002)** - Certain school voucher programs are constitutional; and
- **Grutter v. Bollinger (2003)** - Colleges and universities have a legitimate interest in promoting diversity.

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# THE SIGNIFICANCE OF OCTOBER 1, 2011

What is the significance of on or after October 1, 2011?

## Medicare Reporting

Any Liability claim settlement of \$5,000 or more with an injured Medicare Beneficiary, or a Non Injured Beneficiary who signs a release that has the effect of releasing medicals; can be electronically reported to the Coordination of Benefits Contractor for Medicare in the quarter beginning January 1, 2012. This includes claimants who have filed Errors & Omission, D & O, and Loss of Consortium claims, even if no medical treatment or injury is being claimed.

In an apparent effort to delay a landslide of claims coming in early 2012 CMS released an ALERT dated September 30th which allows a larger dollar threshold exception to the reporting of Liability TPOC's (settlements, judgments, awards or other payments) during the first year that claims become reportable. The

CMS has not changed any other MMSEA Section 111 implementation dates.

## Florida Waiver of Sovereign Immunity Limits Change

For claims arising on or after October 1, 2011, the state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000. However, a judgment or judgments may be claimed and rendered

in excess of these amounts and may be settled and paid pursuant to this act up to \$200,000 or \$300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature.

Contributor: Jim Boelter

TPOC Amount	TPOC Date On or After	Section 111 Reporting Required in the Quarter Beginning
TPOCs over \$100,000	October 1, 2011	January 1, 2012
TPOCs over \$50,000	April 1, 2012	July 1, 2012
TPOCs over \$25,000	July 1, 2012	October 1, 2012
All TPOCs over min. threshold	October 1, 2012	January 1, 2013

## BILL TO WATCH



Seclusion and Restraint on Students With Disabilities in Public Schools;

Requiring that manual physical restraint be used only in an emergency when there is an imminent risk of serious injury or death to the student or others;

## SB144: SECLUSION AND RESTRAINT ON STUDENTS WITH DISABILITIES IN PUBLIC SCHOOLS

providing restrictions on the use of manual physical restraint; prohibiting the use of manual physical restraint by school personnel who are not certified to use district-approved methods for applying restraint techniques; requiring that each school medically evaluate a student after the student is manually physically

restrained; prohibiting school personnel from placing a student in seclusion; providing requirements for the use of time-out; requiring that a school district report its training and certification procedures to the Department of Education, etc.

Source: The Florida Senate  
Effective Date: July 1, 2012



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**SPEED AND ACCURACY**

**JOHNS EASTERN COMPANY**  
Experience. Integrity. Results

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## **MAKING STRIDES**



### **Johns Eastern Company Goes The Extra Mile To Fight Breast Cancer**

Johns Eastern Company, Inc. raised a total of \$9,151.00 company-wide and had over 50 walkers participate in the Sarasota/Manatee Making Strides Against Breast Cancer 5K walk on October 22. Making Strides Against Breast Cancer is the American Cancer Society's premier event to raise funds and awareness to save lives from breast cancer. More than 200 Making Strides walks are organized nationally each year celebrating people who have battled breast cancer, educating people about ways to reduce their risk, and empowering communities to join in the fight.

### **CEU SEMINAR**

**12/6 - "Top Ten Tips"**  
Presented by  
Eraclides, Johns, Hall,  
Gelman

**Hours:**  
11:30 AM - 2 PM

**Location:** Comfort  
Suites University Park,  
8305 Tourist Center  
Drive, Bradenton, FL  
34201

