



JOHNS EASTERN COMPANY, INC.

Claim Adjusters & Third Party Administrators

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DAUBERT: OUT OF THE FRYE-ING PAN

2015 Brings Changes to Florida's Expert Testimony Standards

Recently the Florida Legislature amended §90.702¹, to follow Rule 702 of the Federal Rules of Evidence, as amended in 2000. The Florida Legislature intended to adopt the standards for expert testimony as provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and to no longer apply the standard in *Frye v. United States*, 293 F. 2d 1013 (D.C. Cir. 1923). Further, the legislature, in amending §90.702, intended to prohibit the Courts from allowing "pure opinion" testimony as provided in *Marsh v. Valyou*, 977 So. 2d 543 (Fla. 2007).

The First District Court of Appeals' (DCA) opinion in *Gaiamo v. Fla. Autosport, Inc.*, (Fla 1st DCA 2014) gives practitioners some guidance as to how the First DCA will apply §90.702 in workers' compensation proceedings. At issue in *Gaiamo* was how a defense counsel's expert witness,



Dr. Lee, formulated his opinion regarding apportionment. When counsel asked how Dr. Lee arrived at his apportionment rating, he stated, "When I was asked [about apportionment] and I thought about it, [this] is the answer that I came up with." According to the Court, the 2013 legislature has made clear that the admissibility of expert opinions demands that the requirements of *Daubert* be met and Dr. Lee's testimony was not "the product of reliable principles and methods."

Consequently, the First DCA overturned the Judge of Compensation Claims' (JCC) conclusion that Dr. Lee's testimony was reliable and

comported with Florida's newly adopted *Daubert* standard. The First DCA effectively barred Dr. Lee's opinion on apportionment of permanent total disability benefits and reversed the JCC's opinion.

This case should be watched by all parties involved in workers' compensation litigation. No longer is "within a degree of medical certainty" enough to substantiate a doctor's opinion or allow it into evidence as an expert opinion. According to the Court, all three factors set out in §90.702 must be met before the JCC will allow an expert opinion to be admitted into evidence.

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CEU SEMINAR

March 4, 2015:
High Exposure - Medical Marijuana in Workers' Compensation
Presented by
Eraclides, Gelman, Hall, Indek, Goodman & Waters, PA. 10:30 AM – 1:00 PM,
Holiday Inn Lakewood Ranch, 6231 Lake Osprey Drive, Lakewood Ranch, FL.
Attendance provides two hours of CEU credits.

For more details:
E-mail Rose Rome at rome@johnseastern.com

Don't Forget to Spring Forward March 8



2014 WORKERS' COMPENSATION STUDY RELEASED



Christina Knudsen
Asst. Claims Manager

As we all know, there are challenges that are unique to the workers' compensation industry. To explore these challenges, Rising Medical Solutions, a national medical cost containment and care company, recently surveyed over 400 workers' compensation professionals.

The Workers' Compensation Benchmarking Study was presented last November at the 2014 National Workers' Compensation and Disability Conference in Las Vegas. We thought it would be interesting to share some of the results of this survey with you, as well as let you know how Johns Eastern is addressing these industry issues.



The first challenge explored in the study was Talent Development and Retention. The workers' compensation industry has a critical need for an influx of talent. With many claims professionals approaching retirement age, the study findings suggest

a declining investment in talent development. Less than half of the survey respondents have a dedicated training and development group, while only 36% have a formal training program for new hire claims staff. Additionally, less than one third of the survey participants offer a formal career path with growth opportunities for claims staff and even fewer take advantage of partnerships with colleges to develop training programs.

Here at Johns Eastern, staff training and continued education are both high priorities. We provide formal and informal training for our new hires, as well as continuing education classes for all staff. We also extend to our clients the offer to attend these seminars free of charge. The longevity of the Johns Eastern management staff sets us apart from other organizations as we continue to support our philosophy of growing our talent by promoting from within.



The second challenge explored in the study was the Limited Use of Disruptive Technologies. In the study, "disruptive technologies" are defined as enhanced or completely new technology that replaces and disrupts the existing technology with

new ways of doing things. Keys to using technology to impact operations were identified as systems integration,

improving claims adjuster efficiency, using data analytics and using outcome-based measures to manage operations. However, less than half of the respondents utilize workflow automation or have increased their investments in IT resources to integrate systems in order to streamline claims adjuster efficiency. Half of the responding organizations use a data warehouse to consolidate or integrate systems for reporting purposes. Manual integrations and workarounds can often reflect a lack of system capability. Integrating Bill Review, Utilization Review, Pharmacy Benefit Manager and Provider Network services with a claims system leads to more efficient and cost-effective business practices.

As you'll see on the next page, Johns Eastern will launch our claims system upgrade, AIM 2.0, this year. Our exceptional IT services continue as an integral part of our claims management system, including paperless automated workflow, in-house bill review, real-time system access for our clients, online First Report of Injury entry, as well as integrated Medicare and EDI reporting.



The study goes on to report that measuring provider outcomes and leveraging value-based strategies are rare, as less than five percent of respondents utilize risk/reward based contracting with medical providers. The

top five medical management programs determined to be most critical to claim outcomes were Nurse Case Management, Return to Work services and Nurse/Claim Triage, Pharmacy Benefit Manager/Network and Utilization Review. And the top five medical cost drivers were Medical Providers/ Physicians, Inpatient/Hospital, Pharmacy, Physical and Occupational Therapy services and Diagnostics.

Johns Eastern offers telephonic nurse case management integrated with the claims adjusting team. We also offer strong integrated vendor partnerships that allow us to pass along savings to our clients.

The objective of the study was to provide documentation of industry practices and provide organizations with the opportunity to evaluate strategic aspects of their claim operations. At Johns Eastern, we strive to be on the leading edge in recognizing where the industry is heading and focusing our resources on building a strong future for this company, our employees and our clients.

COMING SOON! UPDATED CLAIMS SYSTEMS AIM 2.0



Kim Ragan
Marketing Coordinator

Johns Eastern is getting close to the release of our new and improved claims system, AIM 2.0, and we are excited to share the new features and improvements with you! AIM 2.0 will offer much more functionality for our clients and our staff.

Here are just a few of the features you can expect:

- ▶ A claims administration system that supports All Lines, including Workers' Compensation, Auto, Property, General & Professional Liability, and Personal Property.
- ▶ An integrated dashboard that can be customized based on the user's security role.
- ▶ A workbench that provides users the ability to open and navigate between multiple claims within one window.
- ▶ A web reporting module for liability loss reporting.



AIM 2.0

- ▶ An automated alert system that will allow us to define, track and benchmark key performance indicators.
- ▶ A litigation module that will allow managers, supervisors, adjusters and clients to view all of their litigation events, as well as the ability to categorize and track all litigation costs, in a single location.
- ▶ Enhanced reporting and filtering capabilities, including Loss Triangles, Safety Analysis Reports and Litigation Reports.
- ▶ Integrated e-mail and instant messaging to allow for convenient communication between our clients and our adjusting staff.

We are certain these improvements will greatly enhance Johns Eastern's ability to manage your claims. If you have any questions or would like more information regarding this upgrade, please contact:

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EMPLOYEES BRING HOLIDAY JOY TO "OUR LITTLE ANGELS"



Stephanie Horne
Account Manager

Johns Eastern has finished our 4th quarter fundraising efforts for "Our Little Angels." Our goal this year was to sponsor 24 children. With great support from our employees and their families, we surpassed our goal and donated presents for 40 kids!

We had five truck loads of presents to deliver this year, which is more than we have ever had in the past. In addition to the presents, our Johns Eastern Northern Branches generously donated \$500 from their Brooke Golf Tournament. We were able to use these funds to purchase more gifts for our kids, as well as two bikes and helmets!

We are now changing gears for the New Year by



focusing our efforts towards Multiple Sclerosis (MS). We are already off to a great start for MS! In November, Johns Eastern held our annual raffle to raise funds for MS. Thanks to the generous support of our vendor partners for the items donated to the raffle, we raised \$1,630!

And we are not done yet! In March, we will be participating in Walk MS in various cities throughout the United States. You can find out more at <http://www.nationalmssociety.org>.

See you out there!



BE INSPIRED. GET CONNECTED. WALK MS.

GUIDELINES ADDRESS BULLYING OF DISABLED STUDENTS

► The United States Department of Education's Office for Civil Rights (OCR) has issued guidance regarding the bullying of students with disabilities.

The guidance, issued in the form of a letter to educators, details public schools' responsibilities under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act regarding the bullying of students with disabilities. If a student with a disability is being bullied, federal law requires schools to take immediate and appropriate action to investigate the issue and, as necessary, take steps to stop the bullying and prevent it from recurring.

The letter further "elaborates on the elements of a disability-based harassment violation and a Free Appropriate Public Education (FAPE) violation, discusses how the OCR generally analyzes complaints involving bullying of students with disabilities on each of these bases, and then concludes with a series of hypothetical examples that illustrate varying circumstances when conduct may constitute both a

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disability-based harassment violation and FAPE violation, a FAPE violation, or neither." Schools must remain cognizant that failing to address bullying could result in the denial of FAPE to students with disabilities.

► The OCR also recently issued a *Dear Colleague* letter and a FAQ document identifying the responsibility schools have to communicate with students with hearing, vision, or speech disabilities as effectively as non-disabled

students.

Both documents address the interplay between the Individuals with Disabilities Education Act (IDEA), Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. Public schools must comply with all three laws, and while compliance with one will often result in compliance with all, sometimes it will not. These documents aim to bring clarity to school districts nationwide.

Sniffen & Spellman, P.A.

WORKING IN COLD WEATHER? BEWARE OF COLD STRESS

Anyone working in a cold environment may be at risk of cold stress. Some workers, like police officers and emergency responders, may be required to work outdoors in cold environments for extended periods of time. The following questions will help workers understand what cold stress is, how it may affect their health and safety, and how it can be prevented.

How cold is too cold?

What constitutes extreme cold and its effects can vary across different areas of the country. In regions that are not used to winter weather, near freezing temperatures can be considered "extreme cold." A cold environment forces the body to work harder to maintain its temperature. Whenever temperatures drop below normal and wind speed increases, heat can leave the body more rapidly. Cold stress occurs by driving down the skin temperature and eventually the internal core body temperature. This may lead to serious health problems,

and may cause tissue damage and possibly death.

How can cold stress be prevented?

Employers should train workers to:

- ◆ Recognize the environmental and workplace conditions that can lead to cold stress, as well as the symptoms of cold stress.
- ◆ Learn how to select proper clothing for cold, wet and windy conditions.
- ◆ Schedule frequent short breaks in warm and dry areas to allow the body to warm up and use provided engineering controls such as radiant heaters.
- ◆ Acclimatize slowly by gradually increasing their workload and allowing for more frequent breaks in warm areas as they build up a tolerance for working in the cold environment.

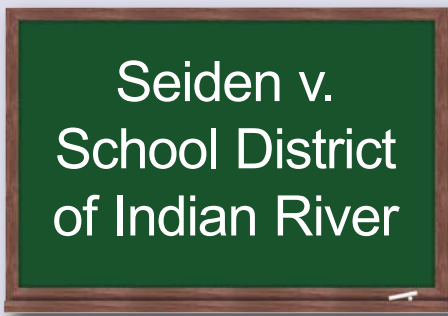
Occupational Safety & Health Administration

SCHOOL BOARD TERMINATION PROCESS UPHeld

► In *Seiden v. School District of Indian River County, Florida* (Case No. 4D13-2250), the Fourth District Court of Appeals (DCA) affirmed a final administrative order of the School Board of Indian River County in terminating Alan Seiden from his teaching position.

Seiden was terminated for misconduct as a result of his response to the behavior of a special needs student. Seiden requested a hearing and the School Board elected to oversee the hearing itself, as opposed to sending the matter to the Florida Division of Administrative Hearings. Seiden then moved to disqualify the School Board, arguing that because the Board failed to report him upon learning of the incident, the Board would be

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focused on its own interest and would not act as a “fair adjudicator.” The School Board denied the motion, conducted the hearing and ruled against Seiden.

On appeal, Seiden argued that his due process rights were violated by the

manner in which the hearing was conducted. The DCA held that the “law does not hold an administrative proceeding conducted by elected officials to the same standards as one held in a court of law” and a due process violation is not “triggered by the fact that the School Board employed...investigated and evaluated his conduct.”

Seiden also argued that the School Board was “demonstrably unqualified” to handle this hearing. The Court found, “although not a model hearing, the hearing complied with due process in that it allowed Seiden a fair chance at challenging the reasons for his termination.”

Sniffen & Spellman, P.A.

DAUBERT, continued

It is anticipated that *Daubert* objections will be raised in the vast majority of claims requiring an expert opinion, including but not limited to:

- major contributing cause
- apportionment
- presumption claims

As a result of this opinion, more time should be spent on the doctor’s methods of diagnosing patients, and if determining those methods or procedures can be reliably applied to the facts in the claim at issue.

Additionally, doctors will need to be prepped more thoroughly before testifying. Having a doctor go “off script” could turn a winnable claim into a losing claim.

It is important to remember that this opinion is still subject to rehearing and will not be final until that time has passed.

¹ If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if: (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case.

Michael Bryan Sanchez, Esq.
Broussard & Cullen, P.A.

GET MOVING FOR HEART HEALTH!

February is Heart Health Month and serves as a great time for us to take stock of our health, our heart and how both can be improved at work.

Most Americans working full-time spend one-third of their day at a sedentary job. To help combat this, employers are increasingly seeing the value of instituting workplace wellness initiatives.

Companies of all sizes are committing to employee health by offering health incentives and they are seeing benefits in return.

Interested in starting a plan at your company? The American Heart Association can help your company start a workplace health plan to get employees moving.

At www.heart.org you’ll find tools to:

- become a Fit-Friendly Worksite
- implement a work Walking Program
- enroll your company in the Heart Walk
- enroll your company in the online Activity Tracker
- start a workplace wellness challenge

American Heart Association



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FLORIDA MINIMUM WAGE INCREASED 1/1/15

Florida's minimum wage, which is tied to inflation as measured by the Consumer Price Index, increased on January 1, 2015.



under the Fair Labor Standards Act, will also receive a bump in their minimum wage base, which does not include tips (\$5.03 per hour, plus tips).

The minimum wage for 2014 was \$7.93 per hour and rose to \$8.05 per hour at the start of 2015. Tipped employees, who may count tips as part of their wages amounting to the minimum wage

The federal minimum wage of \$7.25 per hour is not applicable in Florida, given that it is lower than the State's minimum wage.

Sniffen & Spellman, P.A.

IN THE SPOTLIGHT

WELCOME TO OUR NEWEST CLIENTS: Orange County BOCC and Polk County School Board

CONGRATULATIONS!

Johns Eastern recently recognized the following employees for their length of service:

5 Years: Jennifer Eardley, David Hird, Valerie Jackson, Jason Ricci, Rose Rome, Maricarmen Smith and Rosalind Williams

10 Years: James Farr

15 Years: Jolene Gilbert

20 Years: Holly Agoridis, Teresa Bailey and George Burgee

25 Years: Mike Castle

30 Years: Cindy Ayers and Don Lederer



(L to R): Don Lederer, Teresa Bailey, David Hird, Maricarmen Smith, Jason Ricci, Rosalind Williams, Jennifer Eardley and Cindy Ayers