



ALABAMA SELF-INSURERS — A S S O C I A T I O N —

VOLUME 3

WINTER 2015

ASIA Objectives

ASIA is committed to a workers' compensation program that:

- Adequately compensates the employee with a work-related injury
- Recognizes fair limitations on employer responsibility
- Provides for an appropriate distribution of the compensation dollar
- Reduces litigation
- Is dedicated to eliminating abuses within the system
- Operates within the bounds of reasonable and necessary regulations

ASIA Winter Workshop

February 4-5, 2016
Sheraton Birmingham Hotel
Birmingham, Alabama

ASIA Summer Conference

August 7-9, 2016
Hilton Sandestin Beach Golf Resort & Spa
Destin, Florida

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Executive Director's Report

Charles F. Carr

OUR MONROE COUNTY ANGEL

During the early 1970's and 1980's, it was not Mercedes or Hyundai or Honda or Airbus, but little known Vanity Fair (or VF Corporation) that was the largest industrial employer in Alabama. In north Alabama Bo Kirkpatrick and I spent most of our week on claims for Lee Apparel or Wrangler or some other division of VF Corporation. Meanwhile, down south in Monroeville, Alabama Marion McQueen was working her way up from Plant Nurse at Vanity Fair Mills. By 1991, she had become the Workers' Compensation Director for the various locations of Vanity Fair.



said, "but there is someone that will do a much better job than me and she is actually based in Alabama."

When ASIA was merely an idea being discussed by risk management folks, I called on Rick Broderick who was based in Pennsylvania and headed up all of VF's workers compensation issues all over the country. I didn't know Marion so I turned to Rick to see if he wanted to help us start the organization. "Charles I would love to work with this group," he

That is how I first met Marion McQueen. For those of you who may be out of state or haven't been to ASIA meetings regularly, you may not know Marion. The rest of us know that she is ASIA's special Angel...our "Monroe County Angel." She has been the glue that has always been with us, organizing and planning for each of our seminars and making sure that all

CONTINUED ON PAGE 6

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A Word from the President...

Connie Cox

As I write this, I find myself looking out the window at the changing leaves and wondering how in the world late October snuck up on me. Honestly, it seems like we were all in Destin just a few weeks ago at the Summer Conference.

Speaking of the Summer Conference, I would like to thank everyone who made the conference such a phenomenal success. We

had more than _____ attendees and the trade show has gotten so large that we needed TWO ballrooms to accommodate all of our exhibitors.

I am proud to say that the Silent Auction raised \$_____ for COMP PAC which supports conservative judges in Alabama.

The Scotty Spates Memorial Golf Scramble had _____ participants and helped raise awareness for Kid's Chance, a program that provides scholarships for the dependents of fatally and permanently totally injured workers in the state. Based on these numbers, our organization is clearly growing and, with the continued support of our sponsors, exhibitors and attendees, we are "raising the bar" at each conference.

As your President for the next two years, I am excited about the future of ASIA and look forward to working with the ASIA Board and the Planning Committee to develop new and cutting edge educational programs as well as networking opportunities for our members.

Looking ahead, the Planning Committee has already put together an amazing program for our Winter Workshop which is scheduled for February 4-5, 2016 at the Birmingham Sheraton. Mark your calendars because February will be here before you know it. In the meantime, I hope you have a fantastic holiday season with your family and friends. See y'all in Birmingham!



Connie

Traumatic Brain Injuries in Work Comp

By Ivan Castro, MD

With the increase in workers compensation injuries, traumatic brain injury (TBI) is noted as the leading cause of long lasting disability, coma and death. The Center for Disease Control and Prevention (CDC) estimates that there were approximately 2.5 million cases and 50,000 deaths associated with TBI in 2010. TBI occurs as a result of head trauma from an external or penetrating force leading to structural and/or psychological brain disruption. Depending on the type of brain injury, the recovery process can take years, and in some instances, the injured worker may never recover motor or cognitive ability. Timely treatment is of the essence and any delays in medical treatment can result in costly, long and extensive forms of rehabilitation.

According to the CDC in 2013, falls are the leading cause of TBIs, accounting for approximately 35.2 percent. The second leading cause of TBIs are motor vehicle accidents, accounting for 17.3 percent. Due to the nature of many of auto accidents, they result in the highest percentage of TBI-related deaths according to the CDC. Other forms of TBI-related accidents according to the CDC include forms of being struck in the head, running into stationary objects, violence, inappropriate use of firearms, and assaults. Per the CDC (2012), men have a higher incidence of TBI; noted at 59 percent.

The specific degree of a TBI (mild, moderate, severe and catastrophic) is characterized by the severity of the symptoms caused by the insult and/or injury. When an injured worker presents to the Emergency Room with decreased responsiveness, their Glasgow Coma Scale (GCS) is measured to assess their neurological state and level of consciousness after head injury by measuring the conscious state of a person. Symptoms of TBI may include headache, dizziness, fatigue, blurry vision, short-term memory loss, difficulty focusing, ringing in the ears, depression, poor impulse control, and behavioral changes. The majority of TBI symptoms subside within a few days to weeks from date of injury. Approximately 15 percent of TBI patients do not recover within the first year of their injury. Most mild TBI injuries are often misdiagnosed as they are not capable of being detected on CT or MRI scans and go undetected for a long period of time. Moderate to severe TBI injuries may require surgery to reverse any signs of trauma-induced brain damage while preventing any further injury to the brain.

Depending on the severity of the injury and the permanent damage associated, the injured worker can become debilitated and unable to perform day-to-day functions at home and/or work.

Appropriate treatment of a TBI may be extremely costly and complicated, encompassing diagnostic testing, medications, possible surgery, durable medical equipment, rehabilitation, and/or home/vehicle modifications. The recovery process can be life long and affect the injured worker's physical, cognitive, and vocational and social well-being, resulting in adjustments and accommodations at home and/or work. Injured workers who have moderate to severe TBI may receive individually focused tailored rehabilitation programs consisting of, but not limited to, physical, occupational and speech therapy, social support and psychological and psychiatric treatment. Brain injuries typically mean significant lifestyle adjustments for injured workers and their families.



The cost of treating an injured worker with TBI can vary based on the extent of the injury. The National Institute for Neurological Disorders and Stroke conducted a study in 1989 and found that found that the lifetime cost of treatment for a single person with a TBI was more than \$4 million. According to the CDC in 2010, the estimated economic costs of TBI was \$76.3 billion, with \$11.5 billion attributed to medical costs and \$64.8 billion attributed to indirect costs of TBI, such as lost productivity. An injured worker can be in the hospital for a few days to a few weeks, where charges can range from \$4,200 to \$9,000 per day and if they are home receiving round-the-clock nursing care charges can range from \$1,920 to \$2,900 per day. More and more injured workers are going home to receive their care because of the familiarity of their homes and being around their family support system. Injured workers thrive in their own surroundings.

Patient education about TBI is key, and the sooner the injured worker is treated for a TBI, the quicker he/she begins the recovery process, and the less costly the claim becomes in the long run. The goal of transitioning injured workers to home is assist in safely functioning as independently as possible where they are comfortable and familiar. Home health services help provide TBI injured workers with the right support, where they can learn to adjust, and ultimately lead fulfilling lives. No one brain injury is the same and it is important to have the most accurate clinical assessment and level of care to meet the needs of the injured worker.

ASIA Calendar of Events

FEBRUARY 4-5, 2016

ASIA Winter Workshop
Sheraton Birmingham Hotel • Birmingham, AL

AUGUST 7-9, 2016

ASIA Summer Conference
Hilton Sandestin Beach Golf Resort & Spa • Destin, FL

Receiving Unemployment Benefits MAY Prevent an Employee from Being Deemed Permanently and Totally Disabled

By Joshua G. Holden, Esq.

The Alabama Court of Civil Appeals further addressed judicial estoppel as it relates to an employee receiving unemployment benefits and being deemed permanently and totally disabled. *CVS/Caremark Corp. v. Washington*, 121 So. 3d 391 (Ala. Civ. App. 2013).

In order to receive unemployment benefits the employee must be physically and mentally able to perform work he/she is qualified to do based on past experience and training. *Ala. Code* §25-4-77(a)(3). In order to be deemed permanently and totally disabled in workers' compensation the employee's disability must prevent him from obtaining and/or being retrained for gainful employment in his/her normal occupation or trade. *Dolgencorp, Inc. v. Hudson*, 924 So. 2d 727, 734 (Ala. Civ. App. 2005). The Alabama Workers' Compensation Act does not address how the receipt of unemployment benefits affects a workers' compensation claim but the Court of Civil Appeals has addressed it on two occasions since January 2012. In those two decisions the Court of Civil Appeals discussed if and/or how the receipt of unemployment benefits can affect a claim for permanent and total disability.

The Court of Civil Appeals addressed this issue on January 13, 2012 in *White Tiger, Inc. v. Paul Clemons*, 88 So. 3d. 908, (Ala. Civ. App. 2012). In that case, the Court ruled that saying you are available and able to do some work in an unemployment hearing does not prevent an employee from claiming permanent and total disability in a worker's compensation case. The Court supported this by stating that just because someone is available and able to do some work does not mean they can secure employment that they are physically able and qualified to do. In the workers' compensation case the plaintiff testified that he could not secure work because of his disability but he would give it a shot if someone hired him for a job he was qualified to do. In the unemployment hearing he testified that he felt like he was able to work, had tried to find work he was qualified for and would give it his best shot. For this reason, the Court held that the two statements, in separate judicial proceedings, were not inconsistent with one another in order to satisfy the necessary criteria for judicial estoppel to apply: 1) a party's later position must be inconsistent with its earlier position; 2) the party was successful in the prior proceeding so that acceptance of an inconsistent po-

sition later would create perception that the first or second court was misled; and 3) the party asserting the inconsistent position would derive an advantage or impose an unfair detriment on the opposing party if not estopped. *Hamm v. Norfolk So. Ry. Co.*, 52 So. 2d 484, 494 (Ala. 2010). The Court opined that being willing to do work you are qualified to do is not inconsistent with being unable to find work that you are qualified to do and your disability allows you to do.

In the *Washington* case, the Court did not find judicial estoppel applicable because the Trial Court and Court of Civil Appeals ruled that the defendant waived the defense because it was not asserted in any pleading nor was it tried by consent, or implied consent, of the parties at trial. However, the Court of Civil Appeals indicated that *Washington* would have been judicially estopped from claiming a permanent and total disability based on the Court's rationale in *Clemons*. The Court distinguished the two cases because *Washington* testified in her workers' compensation case that she could not work at all because of her pain and she had not sought employment. *Washington* admitted at trial that she misrepresented to unemployment her ability to work, availability to work and having sought work when she answered "yes" to all of these questions. Unlike the *Clemons* case, in which the plaintiff testified he would give it a shot if he was hired in a position he was qualified for in the workers' compensation case, *Washington* testified that she could not work and had not sought work because her injury/pain prevent her from working at all. Therefore, the two statements were in direct conflict of one another. Based on this the Court of Civil Appeals opined, "Thus, the rationale in *Clemons* would appear to mandate the conclusion that *Washington* is judicially estopped, by her representation to DIR, from receiving permanent-total-disability benefits under the Act. We do not reach this conclusion, however, because we are convinced that CVS waived the judicial-estoppel defense by falling to assert it in its answer or another responsive pleading." Therefore, if the defense had not been waived it appears the Court of Civil Appeals would have ruled that judicial estoppel prevented *Washington* from being deemed permanently and totally disabled.

Of note, Judge Terry Moore concurred in part and stated that he agreed with the result but did not believe that under any cir-

cumstance would the receipt of unemployment benefits prevent an employee from claiming and receiving a permanent and total disability award. He based this on the fact that the legislature included in the Unemployment Compensation Act the effect of a workers' compensation claim on an unemployment claim but did not include in the Workers' Compensation Act a provision that would disqualify an employee from benefits if he/she was receiving unemployment benefits. *Cited Richardson Homes Corp. v. Shelton*, 336 So. 2d 1367, 1370 (Ala. Civ. App. 1976) and *Flor-ence Enameling Co. v. Jones*, 361 So. 2d 564 (Ala. Civ. App. 1978)

Practice Pointer: Make sure to find out as early as possible if the employee/claimant/plaintiff has applied for unemployment benefits. As the Court of Appeals pointed out when CVS asserted it was not aware of the unemployment benefits until trial, the employer is notified when an employee files for unemployment benefits so make sure your attorney and/or adjuster is aware of this. This will allow them time to inquire and/or perform discovery in order to determine if judicial estoppel is applicable to your case.



ABOUT THE AUTHOR

The article was written by Joshua G. Holden, Esq. a Member of Fish, Nelson & Holden, LLC, a law firm dedicated to representing employers, self-insured employers and insurance carriers in workers' compensation and related liability matters. Mr. Holden is AV rated by Martindale-

Hubbell, which is the highest rating an attorney can receive. He is a past chair of the ABA/ TIPS Workers' Compensation and Employers' Liability Committee. Holden and his firm are members of The National Workers' Compensation Defense Network (NWCDN). The NWCDN is a national and Canadian network of reputable law firms organized to provide employers and insurers access to the highest quality representation in workers' compensation and related employer liability fields.

If you have questions about this article or Alabama workers' compensation issues in general, please feel free to contact the author at jholden@fishnelson.com or 205-332-1428.



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Please join us in welcoming
Dr. Ashlee Fulmer



Dr. Fulmer, a native of Georgia, completed her medical training at UAB. She is Board Certified in Physical Medicine & Rehabilitation and has just completed her fellowship training in Pain Medicine. She will specialize in all areas of musculoskeletal pain and will provide both interventional and medication management for our pain patients.

Dr. Fulmer is currently accepting new patients!

of you that set up booths for display at ASIA get the best location possible. For years, she has stayed up late at night cooking pastries and other goodies for ASIA meetings. This has enabled members such as Doug Kitchens to gain a few extra pounds and glow with a sugar-eneduced smile. She organizes the Board of Directors welcome reception that is always held at the beginning of the ASIA Sandestin summer conference.

Now for something you didn't know. You didn't hear it from me first. You have heard it for years but I will give you all the sworn affidavits you need: MARION MCQUEEN IS AN ANGEL. I know because I had 5 older sisters and a Mama who spoiled me like only an angel can spoil you. When I got married, Lyn picked right up and showed me what real angels are all about. How do you describe them?

- 1) They never do too much for you and never ask for anything in return.
- 2) When you are down they can pick you up like no medication can ever do.
- 3) No bad word or harsh comment about another has ever crossed their lips.
- 4) Marion and all these other angels look prettier today than the first day you met them.

So let's talk about the ingredients that led to the making of this Monroe County Angel. Marion Elizabeth Jaye was born February 19, 1936 in Mexia, Alabama. She has been known as "Spokie" to her family from the earliest days. Marion had boy cousins looking after her from the earliest of her recollections. They would put her up in a tree where she could not be reached whenever adults were looking for her.

Like me, Marion joined her cousins and other family members making extra money picking cotton. She learned the meaning of work early on and had her first job at Elmore's 5 & 10 store in Mon-

roeville when she was 14 years old.

In these teen years she began to visit an aunt and uncle in Excel, Alabama. During one of these visits she had a chance to meet a handsome young man by the name of Gerald McQueen. Gerald lived next door to her aunt and uncle. She was formerly introduced to Gerald by her future brother-in-law while visiting the McMillian's Pharmacy and Soda Fountain in downtown Monroeville.

Marion and Gerald dated for about two years before getting married on December 19, 1955. Later, the couple moved to Connecticut where Gerald was stationed in the Navy. Once Gerald was deployed by the Navy, Marion returned to Monroe County and gave birth to their first child, Gerald Jackson McQueen, Jr. Gerald wanted to call his namesake "Mack" but Marion overruled Gerald and "Mack" became Mike McQueen.

The family became big supporters of Excel High School's football program. For those of you who don't know, Excel was the home of Leroy Jordan who would later be an All-American at Alabama and play for the Dallas Cowboys. Marion and Gerald would travel weekly to support Excel and hosted the annual party each year at the end of football season. Doesn't that sound just like Marion?

When Mike went off to Auburn, Marion and Gerald would often attend Auburn's home games and bring food for tailgating and stocking Mike's kitchen. In 1982, Mike married his college sweetheart, Deborah Givens. The joy has never stopped coming after the birth of two granddaughters, Ashlei in 1984 and Lauren in 1986. Family trips were enjoyed to Gulf Shores, Disney World, etc.

Ashlei is now married and has two grandchildren for Marion, Ella Kate and Abe. Lauren has provided two more grandchildren, Jazlyn and Grace and is expecting another that will bless Marion and family around March of 2016.

Marion has been a gardener and one who loves to cook all her life. Her children rave about home gatherings and the

good food and candies that can always be expected.

Though Marion, the children and the entire ASIA organization have lost the love of Marion's life, Gerald, Marion has kept his love alive with regular visits with their children and grandchildren and by continuing to work the ASIA meetings which Gerald loved so much. Marion and Gerald were married for 55 beautiful years.

After that early work with Elmore's in Monroeville, Marion started working with Dr. E.T. Nettles who was responsible for bringing the first hospital to Monroe County. She worked with Dr. Nettles while in high school and later received her nursing degree at UAB. For 17 years she worked with doctors in Monroe County until going full time with Vanity Fair in 1971. For years, plant workers would refer to Marion as "Doc" and she still sees former employees who refer to her as "Doc."

In 1991, Marion became the Workers' Compensation Director at Vanity Fair Mills. She worked not only the Monroeville plant but Vanity Fair locations in Florida, Texas and Mexico.

I speak not only for myself but the entire Board and membership of ASIA by professing my love and respect for Marion McQueen. She is still as beautiful as the first day Gerald met her. She is truly Monroe County's #1 Angel and we thank the Lord that Rick Broderick steered her our way many years ago.

ASIA Membership Update

These companies have become members or renewed membership since the 2015 ASIA Directory went to press.

ACTIVE MEMBERSHIPS

DCH Health System

809 University Blvd East • Tuscaloosa, AL 35401

Phone: 205.750.5221

Felicia Ellison, Director Employee Health

Barry Ingram, Director DCH Center for

Occupational Health

bingram@dchsystem.com

Hunt Refining Company

Post Office Box 038995 • Tuscaloosa, AL 35405

Phone: 205.391.3334

Debbie Hewitt, Administrative Coordinator

dhe Witt@huntrefining.com

Southern Nuclear Operating Co.

Post Office Box 1295 • Birmingham, AL 35242

Phone: 205.992.5270

Shelia Dowd, Disability Management Manager

sadowd@southernco.com

April Walden, Medical Services Coordinator

awalden@southernco.com

ASSOCIATE MEMBERSHIPS

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Phone: 404.275.2552

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dean.robinson@alere.com

Amy Cravey, Regional Sales Director

amy.cravey@alere.com

Combined Investigators

3380 Trickum Rd., Bldg 1200 Suite 100 • Woodstock, GA 30188

Phone: 770.295.8192

Bryant Roland, VP Business Development

broland@combinedinvestigators.com

Scott Feinstein, VP Business Development

sfeinstein@combinedinvestigators.com

Green Square Capital

6075 Poplar Ave., Suite 322 • Memphis, TN 38119

Phone: 901.259.6300

Danny Martin

danny.martin@greensquarecap.com

Baldwin Bone & Joint, PC

1505 Daphne Ave • Daphne, AL 36526

Phone: 251.625.2663

Helen Wright, W/C Coordinator

hwright@baldwinboneandjoint.com

Chuck Carlisle, Administrator

ccarlisle@baldwinboneandjoint.com

Kathy Williams, Office Manager

kathy@baldwinboneandjoint.com

FirstLight HomeCare

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Phone: 334.685.9938

Jason McGee, Managing Partner

jmcgee@firstlighthomecare.com

Danny Feldman, Managing Partner

dfeldman@firstlighthomecare.com

David Burns, Managing Partner

dburns@firstlighthomecare.com

HighTech Imaging Center

1510 Forest Ave • Montgomery, AL 36106

Phone: 334.265.7213

Steve Bartlett, Manager

Samantha Seastrom, Manager

Precision Medical Solutions

119 Market Place • Montgomery, AL 36117

Phone: 334.260.3767

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ASIA Membership Renewal Time is here!

ASIA is a strong organization made up of Active and Associate Members who are dedicated to protecting the interests of employers in Alabama who self-insure workers' compensation coverage on their employees.

ASIA offers two major membership meetings each year. Our Winter Workshop will be held February 4-5, at the Sheraton Birmingham in Birmingham. Our Summer Conference is scheduled for August 7-9, 2016 at the Hilton Sandestin Beach Golf Resort and Spa in Destin, Florida. This meeting drew

over 700 people last year, including a tradeshow with over 100 booths. Both of these events include educational sessions, a tradeshow and ample opportunity to network with peers in the self-insured industry.

Please feel free to contact the ASIA at 334-260-7970 if you have any questions regarding membership in ASIA. We look forward to hearing from you and hope you will join or renew your membership.

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Company _____
Delegate Name (1) _____
Delegate Title _____
Address _____
City _____
State _____
Zip _____
Phone _____
Fax _____
E-mail _____

ANNUAL DUES - The amount of membership dues is based on the total number of Alabama employees. Group Funds are \$250. Please circle the appropriate category for your company.

For companies wanting to register subsidiaries, please contact the ASIA office for dues structure.

Number of Alabama Employees	Annual Dues
1-500	\$150
501-1,000	\$200
1,001-3,500	\$275
3,501-5,000	\$350
5,001-7,500	\$450
7,501-10,000	\$600
Over 10,000	\$800

Group Funds

\$250

Dues investment in ASIA: \$ _____
Suggested contribution to COMP PAC: \$ 100.00
Total Investment enclosed: \$ _____

.....
Please circle one: Check Visa MasterCard American Express

Credit Card #: _____ Expiration Date: _____

Signature: _____ Billing Zip Code: _____ Security Code: _____

.....
Dues paid to ASIA are not deductible as a charitable contribution, but may be deductible as an ordinary and necessary business expense. A portion of the dues, however, is not deductible as a business expense because of ASIA's lobbying activities. The nondeductible portion is 25%. All contributions to COMP PAC are voluntary. COMP PAC is a non-partisan political action committee dedicated to helping conservative, fair-minded legislative and judicial candidates win election to office in Alabama.

REPRESENTATIVES: (You may list up to two additional people for inclusion on the mailing list and in the Membership Directory)

NAME: _____ TITLE: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

NAME: _____ TITLE: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Submitted by: _____

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Delegate Name (1) _____ Title _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____
E-mail _____

Dues investment in ASIA: \$350.00
Suggested contribution to COMP PAC: \$100.00
Total Investment enclosed: \$450.00

.....
Please circle one: Check Visa MasterCard American Express

Credit Card #: _____ Expiration Date: _____

Signature: _____ Billing Zip Code: _____ Security Code: _____

.....
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.....
REPRESENTATIVES: (You may list up to three people for inclusion on the mailing list and in the Membership Directory)

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Address: _____
Phone: _____ Fax: _____
Email: _____

NAME:(3) _____ Title: _____
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Email: _____

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