WCLA NEWS

Summer 2019

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Dear WCLA Member,

Thank you for this opportunity to write to the members of the Illinois Workers Compensation Lawyers Association. Membership in this organization has been a privilege that I have shared with you for more than 20 years. I thank the WCLA for my continued membership.

By conversation, you have asked for comments regarding any anticipated changes or happenings at the Commission. I can tell you that some significant changes are finally on the horizon.

As has been made clear to members of the Commission, I consider it my primary task to take the Commission, technologically, into the 21st Century. This will be accomplished when we enjoy a paperless litigation and record system at the Commission. The need for this change is dictated both by cost to the taxpayers, as well as compliance with the Illinois Supreme Court Rules requiring same.

On June 14th, all employers and their representatives (i.e., insurance carriers and claims administrators) are required to file first reports of accidents electronically. The current method of filing is by a paper document that we know as a Form 45. By requiring electronic filing, we will be able to mine the content of these reports, giving us a best view of the types of accidents and injuries that are reported in our State. There are approximately 200,000 such filings per year.

We have also started the process, by which an electronic filing and litigation system will be purchased and implemented at the Commission. This system will be rolled out incrementally, to make its implementation less onerous and more user friendly.

The current methods of practice will not be abandoned for a paperless system overnight.

Rather, we anticipate a first step in the filing of singular documents, such as Applications for Adjustment of Claim and Settlement Contracts. This will afford all an opportunity to view the system, work with the system, determine its' reliability and make suggestions for improvement before the next step is rolled out.

Eventually, all filings will be made by an electronic process. This will include Applications, Motions and other Pleadings, and Exhibits. The belief is that such a system will promote greater efficiency in our practice.

Information, training for the bar and input from the bar will be integral parts of this project. It is believed that this will be up and running within the next two years. Additional information regarding this project will be made available as the process unfolds.

Thank you for this opportunity to advise the membership of these anticipated changes.

Sincerely,

Michael J. Brennan
Chairman

Interested in submitting an article? Contact John Castaneda at jcastaneda.cac@gmail.com

DETERMINING INSURANCE COVERAGE WITHIN THE CONTEXT OF THE WORKERS' COMPENSATION ACT

By Catherine Krenz Doan
Rubin Law Group, Ltd.

In the case of Core Construction Services of Illinois, Inc. v. Zurich American Insurance Company, 2019 IL App (4th) 180411 (4th Dist. 2019), the appellate court determined whether the insurance policy obtained by a subcontractor on behalf of the general contractor provided coverage for the general contractor. The court considered how the exclusive remedy provision of the Illinois Workers' Compensation Act interacted with an injured workers' pleading and complaints. The court held that the insurance company had a duty to defend the general contractor because the court must consider the indemnity portion of the Workers' Compensation Act when construing the meaning of the underlying complaint.

In Core Construction Services of Illinois, Inc., Core was a general contractor for a construction project at a State Farm facility. Core hired Schindler as a subcontractor to work on State Farm's elevators. Schindler was responsible for the safety and supervision of its' employees. The agreement required Schindler to name Core and State Farm as additional insureds under the insurance policy. However, the policy stated that Core and State Farm would not be insured against their own acts or omissions. The insurance policy provided that Core and State Farm were insured with respect to liability for bodily injury caused in whole or in part by Schindler's acts or omissions or acts or omissions of those people acting solely on Schindler's behalf.

An employee of Schindler, Michael Dineen, sued Core and State Farm for injuries he sustained while working at the construction site. Schindler was not named as a defendant in the case. Dineen alleged that Core and State Farm were negligent and their negligence caused his injury. He alleged failure to provide a safe work site, failure to plan and organize escalator replacement projects, failure to properly schedule staff, failure to inform Schindler that untrained staff would have access to the site, failure to hold proper safety meetings, permitting employees to work in proximity to the escalator repair site without warning and failure to use reasonable care in the exercise of control over the construction site.

Core tendered the claim to Zurich for defense. Zurich declined to defend or indemnify Core as an additional insured. Zurich argued that coverage was not triggered since the injury did not arise solely out of Schindler's acts, errors or omissions.

Core filed a complaint for declaratory judgement. It argued that Zurich was obligated to defend and indemnify it as an additional insured. Core added Schindler as a defendant. Core argued that Schindler violated its subcontractor agreement by failing to purchase adequate insurance. Zurich and Schindler filed a motion for judgement on the pleadings. They argued that the policy only provided coverage to Core when Core was vicariously liable for acts and omissions of Schindler. They noted that the underlying complaint against Core did not allege any negligence on the part of Schindler.

The trial court granted Zurich and Schindler's motion for judgement on the pleadings. The court denied Core's motion for reconsideration. Core appealed the decision of the trial court to the appellate court.

The appellate court reversed the decision of the trial court. The court concluded that the trial court must construe the underlying complaint within the context of the immunity provided by the Workers' Compensation Act. The court held that the defendants were not entitled to judgment as a matter of law because the allegations in the underlying complaint had to be read in the context of the immunity granted by the Workers' Compensation Act. The court stated that it was not clear from the face of the underlying complaint that the allegations failed to state facts which would bring the case within the insureds' policy coverage.

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The court cited the holding of Pekin Insurance Company v. Centex Homes, 2017 IL App (1st) 153601, 72 N.E.3d 831 in support of its decision. In Pekin Insurance Company, the court interpreted the relationship between the Worker' Compensation Act and the insurer's duty to defend a claim. The court stated that the Workers' Compensation Act gives tort immunity to the injured workers' direct employer. Id. Therefore, an injured work is barred from bringing a personal injury complaint against his or her employer. Id. As a result, the direct employer, despite being the insured, is often not named in the negligence complaint filed by the injured worker. Id. The court held that due to the Workers' Compensation Act, the underlying complaint does not have to state that the insured was negligent since silence relating to the employer's acts or omissions may be as a result of tort immunity. Id.

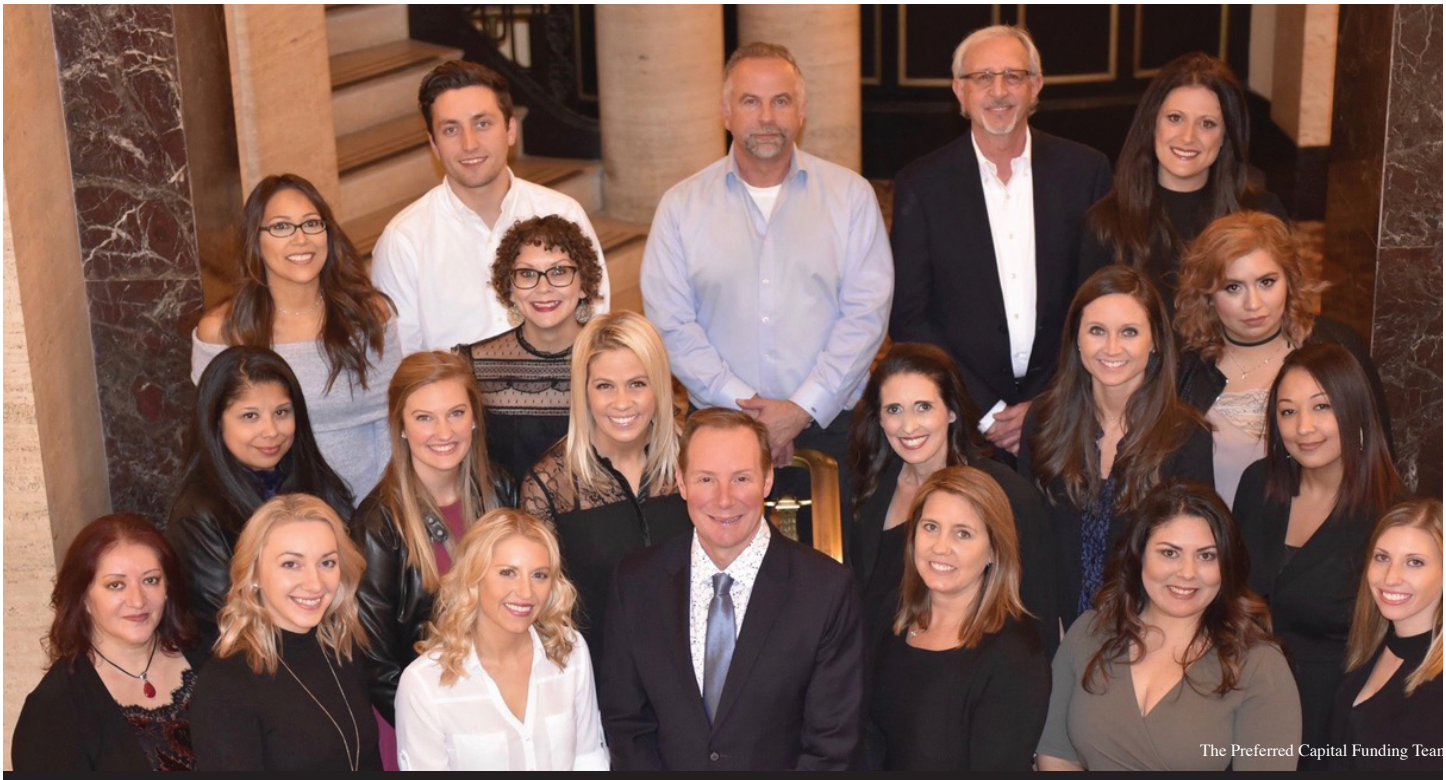
The facts of Hastings Mutual Insurance Company v. Blinderman Construction Company, 2017 Il App (1st) 142473, 91 N.E.3d 439, were similar to the facts of Core Construction Services of Illinois. In Hastings Mutual Insurance Company, the subcontractor was required to obtain insurance for the general contractor. Id. The insurance policy excluded coverage for the sole negligence of the general contractor. Id. One of the subcontractor's employees was injured while working. Id. The worker filed a complaint against the general contractor for negligence and did not name the subcontractor in the complaint. Id. The insurance company argued that it did not have a duty to defend the case since it arose out of the sole negligence of the general contractor. Id. The court held that the insurance company was required to defend the case since the Workers' Compensation Act barred recovery against the subcontractor, the injured worker's direct employer. Id.

In Core Construction Services of Illinois, the court noted that Schindler was a subcontractor of Core. Dineen alleged negligence on the part of Core and State Farm. The negligence included allowing unfettered and unrestrained access to the work site, which caused Dineen to be injured. Dineen did not allege negligence on the part of Schindler. The court citing Pekin Insurance Company stated that " 'the allegations of the underlying complaint must be read with the understanding that the employer may be the negligent actor even where the complaint does not include allegations against the employer.'" The silence with regard to the possible omissions of the employer must be understood as a possible result of the tort immunity for employers under the Workers' Compensation Act and should not be a basis for refusing to defend an additional insured.

The court found that when the allegations in the underlying complaint were liberally construed in favor of the insured, then the potential existed that Schindler's acts or omissions caused Dineen's injuries. The court stated that the complaint alleged that Core and State Farm "failed to provide a safe, suitable and proper work site" and "failed to use reasonable care in the exercise of control over the construction work related to the escalator." The court noted that pursuant to the subcontractor agreement, Schindler was responsible for the work on the escalator and the safety and supervision of the employees. Accordingly, the court found that it was possible that Schindler "failed to provide a safe, suitable and proper work site" and "failed to use reasonable care in the exercise of control over the construction work related to the escalator."

Since it was possible that Schindler's acts or omissions caused Dineen's injuries, the court held that Zurich had a duty to defend Core in the underlying law suit. The silence in the complaint regarding Schindler's possible negligence must be understood as the possible result of tort immunity for employers and not as a basis for Zurich to refuse to defend Core. Therefore, the court found that the trial court erred in granting Zurich and Schindler's motion for judgement on the pleadings. The case was remanded back to the trial court for further proceedings.

The holding in Core Construction Services of Illinois indicated that it is necessary to construe the underlying complaint liberally. Further, where the case arises out of a



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work related injury, the underlying complaint must be read with an understanding of the Workers' Compensation Act. Specifically, since the Workers' Compensation Act precludes an injured worker from filing a negligence case against his or her employer, the complaint will not name the employer as a defendant or allege negligence on behalf of the employer. The lack of alleged negligence in the complaint should not be taken as an indication that the employer was not negligent It is only an indication that the injured worker is barred from claiming that the employer was negligent.

CONCUSSIONS – NOT JUST AN NFL ISSUE
BY: ILLINOIS BONE & JOINT INSTITUTE

It is very common to hear about an athlete receiving a concussion while playing a game. We typically think of sports when we hear the word concussion, but this is not the only environment where you can suffer a concussion. Concussions are common injuries that can occur in the work place as well as on the field of a sporting game.

Let's take a look at some quick facts about concussions:

- Nearly one out of every four concussions occur in the workplace – concussions account for 3% of all work-related injuries.
- Falls are the most common cause of workplace concussions, followed by vehicle accidents.
- Construction and manufacturing workers are the most likely to suffer a concussion. Service industries (including health care) also have a high ranking.

Anthony Savino, MD, joined Illinois Bone & Joint Institute (IBJI) with the mission to improve the lives of concussion patients and progress the evolving science on concussion management.

So, what is a concussion? Savino provides more information on what you need to know about concussions in the workplace.

"A concussion is a brain injury caused by movement of the brain within the skull. This can then be followed by a variety of possible symptoms which can include headaches, sensitivity to light or sound, foggy thinking, changes in sleep, and feeling 'not quite right,'" Savino answers.

These symptoms typically start immediately following impact, however they may be delayed by up to 48 hours. This means that employees may report symptoms up to two days after an injury.

Concussions are often misunderstood. Here are the facts:

- A worker does not need to be hit in the head to suffer a concussion. It can be caused by an impact to the body or any quick movement of the head such as whiplash caused by a car accident.
- A worker does not need to be "knocked out" or lose consciousness to have a concussion. In fact, it is uncommon for this to happen.
- A worker does not need to have loss of memory or amnesia to be diagnosed with a concussion.

While the symptoms of concussions may be severe, they are treatable in the right hands. Since there is no single objective test to diagnose a concussion, proper early diagnosis by a concussion specialist is vital to an optimal outcome.

An appropriate concussion evaluation at minimum should consist of a detailed history, neurological examination and comprehensive management plan. Additional testing, including imaging, neuropsychological testing or therapies such as cervical or vestibular therapy may also be recommended on a case by case basis.

Additionally, ensuring an appropriate workplace reintegration plan has shown to decrease time lost away from work. Reintegration should include job modification, accommodation for treatment needs, a gradual RTW strategy, continued workplace commitment to safety, and ongoing communication with the health care provider.

If there is concern that a concussion has been suffered, an evaluation should be scheduled as soon as possible.

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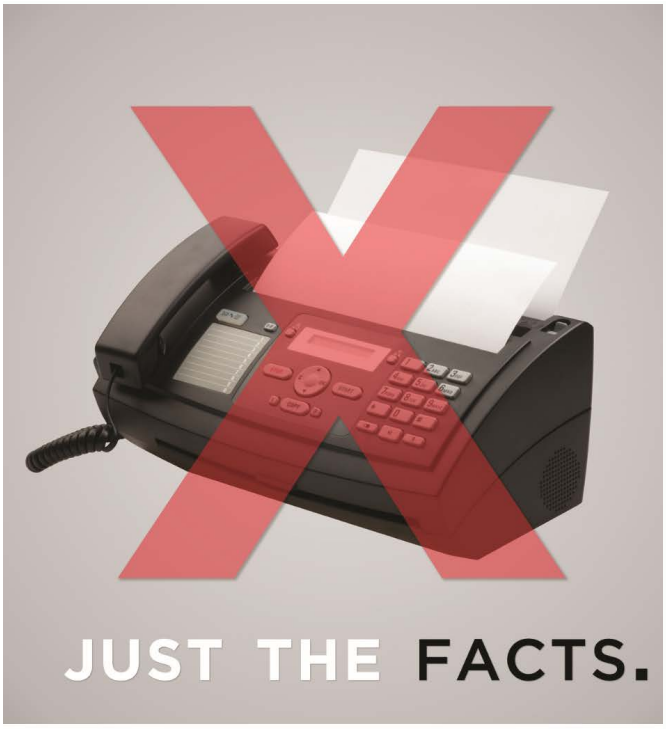

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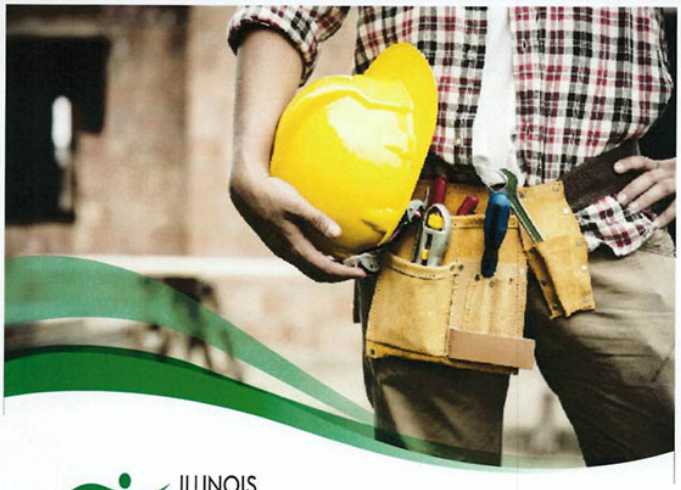

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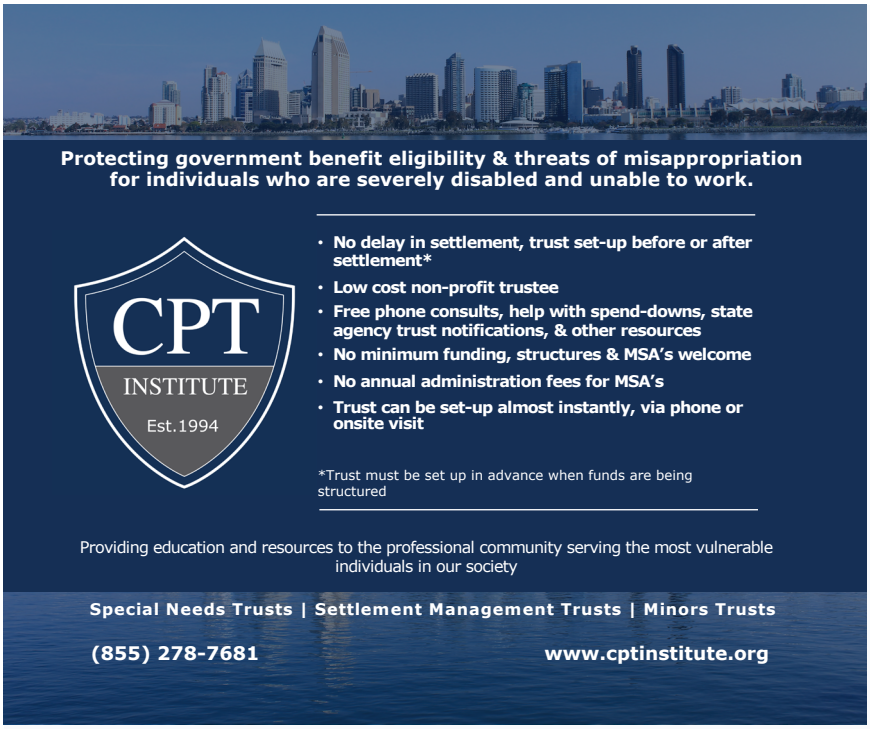

Upcoming Events

For details and registration, visit our website.

July 25 - Brown Bag Lunch - 12 pm, Randolf Center, Chicago

July 25 - YLS Happy Hour - 5:30 pm, Bodega, Chicago

August 9 - Annual Golf Outing - Crane's Landing Golf Club at Lincolnshire Marriott Resort

August 29 - Brown Bag Lunch - 12 pm, Randolf Center, Chicago

September 26 - Brown Bag Lunch - 12 pm, Randolf Center, Chicago

October 31 - Brown Bag Lunch - 12 pm, Randolf Center, Chicago

November 7 - Nomination Meeting - 5 pm, Latinicity, Chicago

November 21- Brown Bag Lunch - 12 pm, Randolf Center, Chicago

December 6 - Holiday Party - 5:30 pm - The Art Institute of Chicago

December 12 - Election Meeting - 5 pm, Latinicity, Chicago

December 19 - Brown Bag Lunch - 12 pm, Randolf Center, Chicago