WCLA NEWS

President's Message

Winter 2021

My greetings for this new year to all our members on behalf of your newly sworn-in officers and directors. We had a strange and difficult year in 2020, and yet we were fortunate to practice our profession and represent our clients. Our thanks to last year's president, Laura Hrubec, for her leadership and hard work. The dedication and tireless efforts of Chairman Michael Brennan, the Arbitrators, Commissioners, and the entire Commission staff allowed us to continue with our practice while other legal systems were shut down. We negotiated remotely, settled cases, and had them electronically approved without delay. We participated in virtual pre-trials, presented virtual oral arguments, and even had opportunities to participate in some hearings. Thanks to your spirit of cooperation and participation. I wish we could all take a sigh of relief, but we have a way to go before we can put the effects of the pandemic behind us. We will need that same cooperation until we can finally say things are back to normal.

Last year we reached a new record of having 750 members in our organization. We will strive to break that record. We have had great success with our CLE programs and we intend on continuing our efforts to provide even more programs this year. In addition to the monthly noon CLE sessions, we now host multiple medical seminars, covering an even wider range of topics essential to our practice. This month, in addition to the return of our three-hour professional responsibility "bootcamp" seminar, we will also host a special presentation by the Commission's CompFile staff next week, introducing and demonstrating the next stage of electronic filing.

We all missed the many social events that had to be postponed due to safety concerns. And yet, some good came from those cancelations, as we allocated the funds earmarked for social events to assist those in need. We should take pride in our organization's charitable contributions: We donated $50,000.00 to The Ronald McDonald House; $3,500 to the Central Illinois Food Bank, $3,500 to the Greater Chicago Food Depository, $3,500 to the Northern IL Food Bank, $5,000 to Direct Effect Charities, and $5,000 to Kids Chance of Illinois. We all look forward to when we can gather socially and celebrate successes and accomplishments. Hopefully sooner than later, stay tuned.

And thank you to our sponsors. Through their support we can continue to offer more services and benefits for all members. During this year we have even more goals to accomplish, all focused on assisting us in the commerce and practice of our profession. Most important, we need to continue to preserve the advocacy system that benefits all of our clients: workers and employers. As always, the officers, directors and I will welcome your comments and suggestions regarding the course of our organization during this year.

We thank you in advance for your continued support.

- **Vitas J. Mockaitis**
  WCLA President

Inside this issue:

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

THE THIRD RELEASE OF COMPFILE MEANS FULLY ELECTRONIC FILING FOR ILLINOIS WORKERS' COMPENSATION

By David Larson, Deputy General Counsel,
CompFile Project Director
Illinois Workers' Compensation Commission

In 2020, the Illinois Workers' Compensation Commission (IWCC) debuted CompFile, an online filing and case management system for workers' compensation cases. The second release of CompFile allowed litigants to process settlement contracts electronically. Attorneys, with the help of their legal assistants, now draft, circulate, and sign contracts using CompFile. Arbitrators and Commissioners access contracts within moments of submission, allowing for unprecedented speed in review and approval. Soon, with the third release of CompFile, that same ease and efficiency extends to all other filings, including applications, motions, decisions, and reviews.

At the direction of Chairman Michael Brennan, electronic filing and case management – a project that has been years in the making – has materialized as the cloud-based system we now know as CompFile. Despite innumerable obstacles created by the ongoing COVID-19 pandemic, the incremental implementation of CompFile in three releases has transpired as planned. CompFile, introduced just as businesses and industries around the globe have become increasingly reliant on digital forms of communication and productivity, arrived not a moment too soon.

Throughout the process of creating CompFile, in order to build the most effective system possible and create a positive user experience, the CompFile Project Team capitalized on input from key stakeholders, including attorneys, legal assistants, Arbitrators, Commissioners, and other IWCC staff. The third release of CompFile not only extends the paper-to-digital transition beyond settlement contracts, but also incorporates improvements to electronic settlement contracts based on user feedback.

For updates, webinar schedules and recordings, video links, and other instructional materials, CompFile users are encouraged to visit the CompFile Implementation webpage at www.iwcc.il.gov/compfile. There, CompFile users can also find valuable information and resources dedicated to pro se litigants.

Electronic filing and case management will increase efficiency for the IWCC and those who rely on it by facilitating faster processing, providing uninterrupted access to information, and reducing storage and mailing costs. CompFile has made it possible to accomplish in one day what previously required weeks. Given that applications, settlements, motions, and other filings make up tens of thousands of Illinois workers' compensation operations every year, CompFile promises to be not only vitally impactful, but a historic turning point for the Illinois workers' compensation community.

THE MCALLISTER DECISION AND PURSUING A CASE TO THE ILLINOIS SUPREME COURT

By: Karolina M. Zielinska,
Elfenbaum Evers & Zielinska, P.C.

If I had to summarize my journey to the Illinois Supreme Court, I would admit that it was long, and at times, exhausting; however, it was also an immensely motivating and rewarding experience unlike any other. It required strategy and patience, but most of all, it required teamwork. Fortunately for my client and me, we had the best minds in the business supporting us.

In September of 2017, I presented oral arguments before the appellate court. It took eighteen months for the court to issue its decision. During those months, I personally visited the clerk's office on multiple occasions confident that the decision was misplaced or long forgotten. In March of 2019, the court finally issued its decision. As I read the 61-page decision, it became clear there was a heated disagreement among the justices about the proper legal analysis.

All five justices concurred as to the end result – that Kevin McAllister, a sous chef who injured his knee while standing up from a kneeling position after looking for a pan of carrots in a walk-in cooler, did not sustain an injury that arose out of his employment. There was a substantial debate, however, as to what the proper analysis should be when determining whether an injury arises out of employment. The court was split 3 to 2, with both the majority and special concurrence devoting 25 pages to criticizing the other's position. It was apparent that my client's case became a battleground for the appellate court justices, who argued about what analysis should be used, what prior cases they now believed were incorrectly decided, and what the future of "arising out of" would look like for all workers' compensation claims.

I recall circulating copies of the decision within our office and speaking with our other two attorneys, Ian Elfenbaum and Rachael Sinnen, about how this didn't feel like a typical decision. After careful thought and debate about the best course of action, not only for our client but also for future claims, we decided to attempt to bring this matter before the Illinois Supreme Court. Our first step was to file a short Petition for Rehearing, or in the alternative, Relief under Supreme Court Rules 315 and 316. We knew we would not be granted a rehearing, but we felt fairly confident that at least two members of the appellate court would agree that the case warranted consideration by the Supreme Court, given the panel's clear division in the opinion itself.

As such, we filed our petition on April 2, 2019, arguing, in part, that thousands of employees rely on a functioning administrative system and the irreconcilable decisions coming down from the appellate court panel regarding risk analysis were not providing those employees with that functioning system. We succeeded, and on April 11, 2019, our petition for certification pursuant to Supreme Court Rule 315(a) was granted with Justices Hoffman, Hudson, Harris and Moore voting to grant the petition. Justice Holdridge was the only justice to deny our request.

Even with our petition for certification granted, we had a larger hurdle to overcome: getting the Illinois Supreme Court to agree to hear our case. Our strategy in drafting our Petition for Leave to Appeal (PLA) was to focus on the confusion and division generated by the lower courts. We argued that while both the majority and special concurrence in McAllister cite to the Supreme Court precedents set forth in Caterpillar Tractor and Sisbro in support of their positions, the two sides clearly were not interpreting the analysis and findings in the same manner. Both sides were outwardly contradicting each other's interpretations and finding that the other's misreading of Supreme Court case law extended the Act beyond what the legislature intended. Additionally, we highlighted the outright disavowal of prior concurrences by

The Preferred Capital Funding Tean

Why do more plaintiff attorneys refer their clients to PCF than any other funding company?

* **We are the largest supporter of Trial lawyers associations in the country andthe largest funding company supporter of the WCLA.**
* **We do no mass media advertising and pass the savings onto your clients.We therefore charge around half what our competitors charge.**
* **We wire funds into your client's account at no extra charge. Our competitors often charge over $100 for that same service.**
* **Easiest streamline process with just one call, text, or email with case information. No faxes!**

We were the first and are the largest licensed finance company in the country providing advances to injury victims. Call today to speak with a Preferred Capital Funding representative.

CELEBRATING 20 YEARS TOGETHER PREFERRED CAPITAL FUNDING
20
ANNIVERSARY

Alabama • Arizona • Colorado • Florida • Georgia • Illinois • Indiana
Iowa • Louisiana • Maine • Michigan • Mississippi • Missouri • Nebraska • Nevada • Ohio
Oklahoma • Oregon • Tennessee • Texas • Utah • Washington • Wisconsin • Wyoming

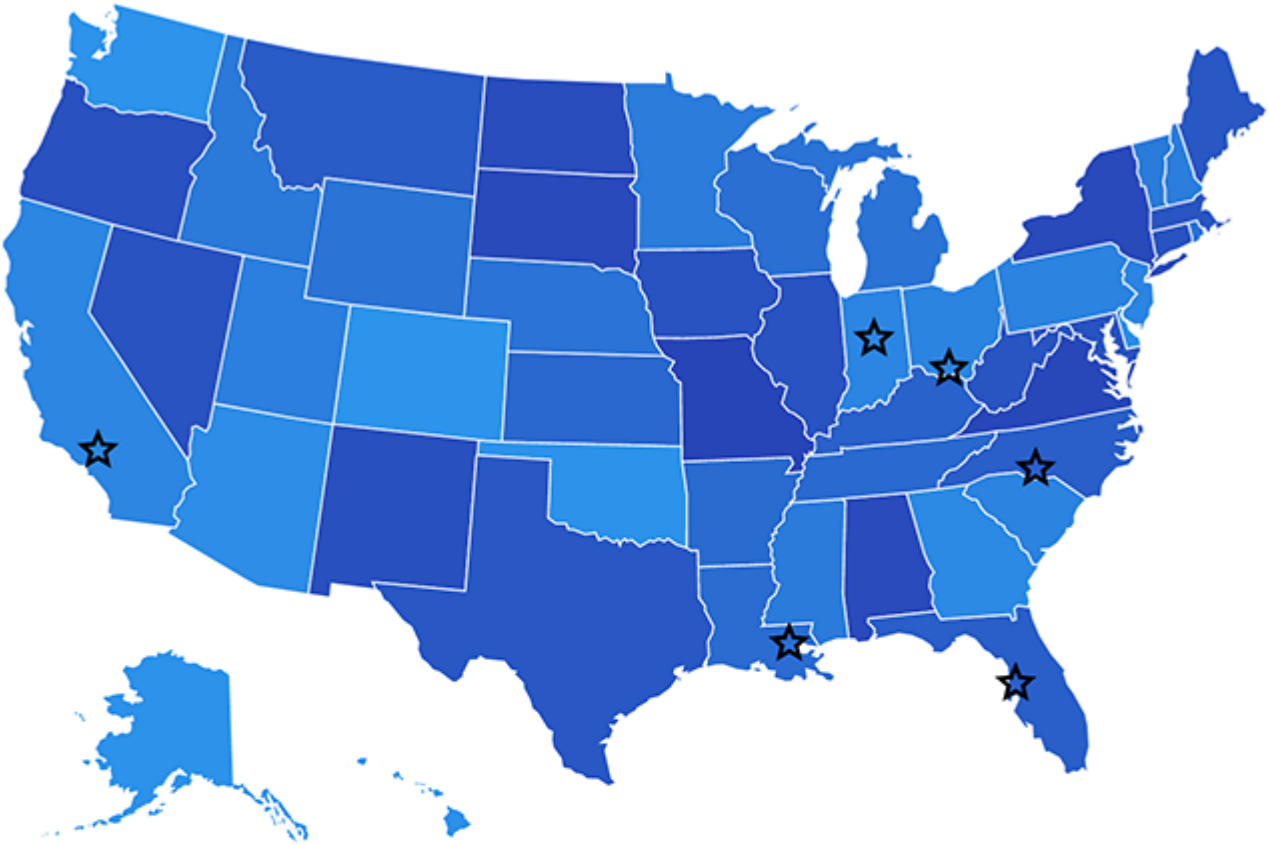
1-800-992-9615

Text case information to 1-312-313-8008

www.PCFCash.com

CATTIE & GONZALEZ

A Higher Standard in MSP Compliance



Providing client services from offices in the following metropolitan locations:

- Charlotte, North Carolina;
- Tampa, Florida;
- New Orleans, Louisiana;
- Cincinnati, Ohio;
- Indianapolis, Indiana; and
- Los Angeles, California.

Working with clients from 44 states and counting ...

National in Scope, Hometown in Feel

McCallister, continued from Page6

Justice Holdridge.

We pointed out the mess created by the appellate court's 2015 decision in Adcock v. Illinois Workers' Comp. Comm'n. While Justices Holdridge and Hoffman supported the Adcock analysis, Justices Harris, Hudson and Moore vehemently argued that it remained at odds with other decisions, specifically stating in McAllister: "… we reject Adcock and its legal analysis. In doing so, we hold that the definition of a neutral risk as set forth in Adcock is inconsistent with the purpose of the Act, overly broad, and unsupported by supreme court precedent."

With this division in mind, our goal was to advise and convince the Supreme Court that their guidance was necessary, and that without their reaffirmation of the law as it pertained to the categorization of risk and "arising out of" analyses, the lower courts would continue to issue divided decisions lacking any sense of uniformity.

We filed our PLA on May 13, 2019. The next four months were quite nerve-wracking while we waited to hear. Finally, on September 25, 2019, the Court reached a decision. I remember I was at the Thompson Center in the concourse level picking up a coffee after attending a pretrial on the 8th floor when I found out our leave was granted. At this point, I had worked on this case for over four-and-a-half years, losing at the Commission level, the circuit court and the appellate court. Finding out that I would have the chance to argue before the Supreme Court was monumental.

The next day, Ian, Rachael and I met to determine the strategy for drafting our brief. We elected to file a separate brief rather than standing on our PLA because we needed a new focus. Our PLA emphasized the division in the lower courts in order to convince the Supreme Court to provide guidance. Our Supreme Court brief, however, would focus more on convincing the Supreme Court to re-affirm the law we believed was proper and to overturn Adcock.

While I would like to say that the way we structured the argument and the legal reasoning we gave remained consistent and unwavering through the drafting process, it did not. It felt like we reconsidered and rewrote sections of our arguments every other day. I recall countless disagreements with Rachael during our weekend drafting sessions over format, sequence of the argument, and whether we were overextending the meanings of prior case law.

In the end, it was our position that 1) the "arising out of" standard had already been clearly established by Supreme Court precedent in Caterpillar Tractor; 2) the appellate court in Adcock had created a new analysis not in line with Supreme Court precedent and raised the burden for injured workers; and 3) by applying the correct legal analysis for determining what "arises out of" employment, the Court would undoubtedly hold that our client was injured while engaging in an activity that he might reasonably be expected to perform incidental to his assigned duties as a sous chef.

We filed Plaintiff-Appellant's Supreme Court Brief on October 29, 2019, and our Reply Brief on December 18, 2019. The next day, I was advised by the Supreme Court Clerk that oral arguments would take place on January 15, 2020. I had less than a month to prepare for the most significant oral argument of my career.

I promised myself a week off for the holidays and then dove back into the case. The preparation was endless. I read and re-read case law and prior appellate court and Supreme Court decisions, painstakingly memorizing the facts, analyses, and rulings of each. My team held an oral argument round table with some of the most leading lawyers in the field to discuss the potential issues and questions we thought would arise at oral arguments. I prepared and then prepared some more, even searching for new cases the night before oral arguments.

I argued the case before the Supreme Court on January 15, 2020 in Springfield. I tried to, but couldn't stop family, coworkers, and even a couple of friends from traveling downstate to support me. (In the end, I was glad they did!) The Justices were equipped with pre-drafted questions on their tablets. They quizzed my opponent and me about facts and rulings from prior Supreme Court decisions. They questioned what steps the lower courts

McCallister, continued from Page7

took in analyzing McAllister's claim. They were engaged and attentive. The process was a remarkable experience, and I recall leaving the courthouse that day feeling confident that our position was heard.

We waited eight long months for the decision, ceaselessly checking for new opinions as time stretched on. Finally, on September 24, 2020 the Supreme Court ruled in our favor. The Court not only awarded my client benefits consistent with the Arbitrator's decision, but also re-affirmed the law and expressly overturned Adcock as it pertained to the "arising out of" legal analysis. The Court unanimously agreed with us on every issue, and with that, my incredible five-and-a-half-year journey came to a perfect end.

ATI Physical Therapy

For more than **20 years**,
ATI has been a trusted leader for
millions of patients nationwide.

For a complimentary screening or to find a location near you, call 855-MY-ATIPT or visit ATIpt.com

ATI PHYSICAL THERAPY

ATHLETICO
PHYSICAL THERAPY

THE FIRST
48 HOURS
ARE THE MOST IMPORTANT

That's why we're fully committed to providing initial evaluations within 48 hours. We have more than 400 convenient locations.
We are open early. We are open late.
We do whatever it takes.

For over 25 years we've been dedicated to providing top quality work rehabilitation care when you need us most.

To schedule Work Comp patients or services, including FCEs and Work Conditioning:

Call - 888-8-WORK4U
Email - Work4U@athletico.com
Visit - www.athletico.com/Work4U

MB | Madden & Bergstrom

Serving lawyers' bond needs for over 70 years

2021

Save the Date Social Events

Golf Outing

Friday, Aug. 6

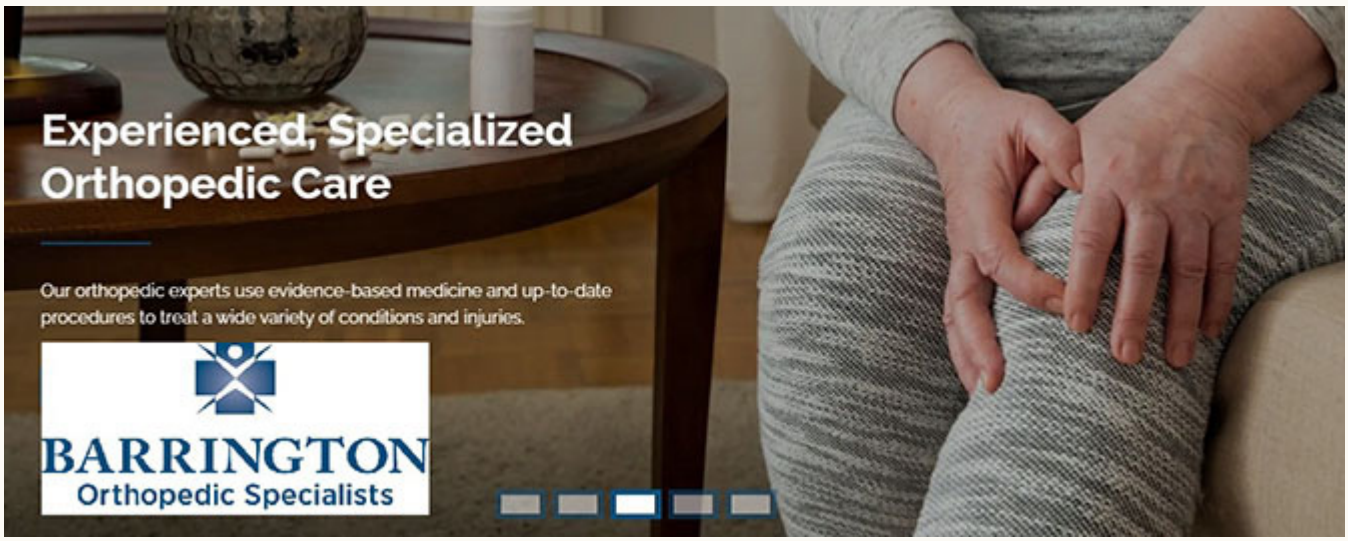
Hilton Chicago/Oak Brook Hills

Holiday Party

Friday, Dec. 3

The Shedd Aquarium Chicago

Golf Outing 2020


Experienced, Specialized Orthopedic Care
Our orthopedic experts use evidence-based medicine and up-to-date procedures to treat a wide variety of conditions and injuries.
BARRINGTON
Orthopedic Specialists

Illinois PAIN & SPINE INSTITUTE

Appointments in 24 Hours if requested

Direct contact available for all billing and documentation

ADVANCED MEDICAL DIAGNOSIS AND TREATMENT FOR

Neck Pain •Lower Lower Back
•Knee Pain•Scoliosis •Spinal Stenosis
•Disc Issues• Headaches
• Neuropathy
• Workers Comp

800-340-PAIN
Call Now

CASTLE CONNOLLY TOP DOCTORS

Eleven Time Winner! CHICAGO

TOP U.S.News DOCTOR

SPECIALTIES

• Interventional Pain • Orthopedic • Spine
• Foot and Ankle • Chiropractic Care

800-340-PAIN

Offices Located in: Barrington, Elgin, McHenry, Itasca, Libertyville, Elmhurst, and Huntley

Upcoming 2021 MCLE

For details and registration, visit our website

Note: Educational seminars are recorded for On-Demand CLE Credit for WCLA members

Feb 10 - Virtual Seminar - CompFile Release 3

Feb 12 - Virtual Professional Responsibilty Boot Camp - 3 Hrs.

Feb 25 - Virtual Seminar

Mar 10 - Virtual Seminar

Mar 25 - Virtual Seminar

Apr 29 - Virtual Seminar

May 27 - Virtual Seminar

Jun 24 - Virtual Seminar

Jul 29 - Virtual Seminar

Aug 26 - Virtual Seminar

Sep 30 - Virtual Seminar

Oct 28 - Virtual Seminar

Nov 18 - Virtual Seminar

Dec 16 - Virtual Seminar