

Minutes of the Adjudication Committee Meeting
July 21, 2010
Savannah, GA
Chair: Judge Deneise Turner Lott

Eric L. Barnum, a partner with Schiff Hardin LLP in Atlanta and an experienced litigator in employment law who was recently appointed Deputy General Counsel of the National Bar Association, took us “into the weeds” on the topic of workers’ compensation issues in the digital age. Because social networking sites offer such information-rich glimpses into subscribers’ personal lives, they are an inexpensive and efficient way for insurers and employers to investigate claims. Mr. Barnum shared some of the nuances of the Stored Communication Act and the Electronic Communications Privacy Act, and he warned against ever relying on a posting on a social networking site to deny a claim!

Mr. Barnum also provided more background on *Hensley v Colgan Air*, a recent case that grabbed national attention because Facebook refused to honor a subpoena for all documents/postings on an employee’s Facebook account. Facebook successfully argued that the Electronic Communications Privacy Act protected the privacy of user accounts, although the employee, herself, later agreed to provide the requested information. Commissioner Bill Dudley, a Virginia Commissioner who had participated in the case, was present at the roundtable to share his insights into the facts and law of this very interesting case.

During the second half of the meeting, Rick Victor, Executive Director of the Workers’ Compensation Research Institute, presented a power point presentation on the impact of the economy on the workers’ compensation system. He noted that it may be difficult to predict outcomes during this recovery because it is expected to be slower than the relative “bounces” that we have experienced after past recessions. Although recovery from past recessions followed a “V” or “U” pattern, the graphs of our recovery from this recession may follow what he described as a “jagged checkmark” march back to baseline.

Mr. Victor also cautioned that experiencing a deep recession followed by a prolonged recovery may cause us to develop a “new normal” in which we permanently adjust our expectations about what is “normal” and, accordingly, what is “good,” “better,” and “best.” To mitigate losses and facilitate economic recovery, employers will more aggressively explore the elimination of costs that do not affect injured workers’ outcomes, for example, unnecessary medical expenses or unnecessary disputing costs such as some medico-legal costs. They may also try harder to avoid unnecessary complexity in dispute resolution, and they may become more creative in the consolidation or outsourcing of departments or services.
