

WWCAA QUARTERLY

Quarter Ending December 31, 2001
Issue #1

Introduction

This is the first issue of WWCAA QUARTERLY, the official newsletter for the Wisconsin Worker's Compensation Attorney Association. The coeditors are Attorney Larry Schifano and Attorney Patricia Janka Sandoz.

The goal of this newsletter is to disseminate information relevant to worker's compensation practice and the WWCAA. The editors envision that each edition of the newsletter will contain information in the following categories:

1. **WWCA News.** This section will contain information about the government of the WWCA: events, meetings, policies, and so forth.
2. **Department News.** This section will serve as a conduit through which the Department can communicate with the worker's compensation bar. The recent correspondence on threats of violence is an example of the type of information that might be communicated in this section.
3. **Legal Update.** This section will contain summaries of the appellate decisions in worker's compensation decided during the quarter. It will also contain information about legislative and administrative changes to Wisconsin worker's compensation law.
4. **Substantive Articles.** The editors would like to publish articles authored by WWCAA members on worker's compensation issues of interest. The editors kindly ask that members interested in writing articles to contact us with their ideas. That way, we can line up articles for each issue, and we can ensure that we will not have two or more members writing on the same topic.

In addition, the editors invite the membership to send us e-mail's with suggestions on matters to be covered in the newsletter, on a quarterly basis or on some other basis.

Message from the President

Department News

For those of you who have not yet received this, below is the recent correspondence from the Department regarding threats associated with worker's compensation matters:

**Worker's Compensation
Insurance Letter**

INS #	432
Date	September 20, 2001
Program	Legal Services
Type	New Procedure
Replaces	None



State of Wisconsin
Department of Workforce Development

201 East Washington Avenue
P.O. Box 7901
Madison, WI 53707-7901
Telephone: (608) 266-1340
e-mail: DWDDWC@dwd.state.wi.us

To: Insurance Carriers' and Self Insured Employers' Claims Handling Offices
From: Judy Norman Nunnery, Division Administrator
Subject: Reporting Threats or Potentially Threatening Situations

Purpose: To request that any threats of violence related to a worker's compensation claim, which comes to your attention, be reported to the Worker's Compensation Division immediately.

Scope: This request applies to all worker's compensation claims, both litigated and non-litigated. It applies to threats against anyone—for example, administrative law judges, attorneys, medical providers, employers, co-employees—not just threats against your employees. It applies to threats by anyone involved with the claim, not just threats by the claimant. Finally, even if there has been no direct threat, it applies to situations where, based on your experience and judgment, there is a reasonable basis to be concerned about the potential for violence.

Background: The Division strives to provide a safe environment for its staff and the public it serves. This responsibility extends to multiple locations in more than 30 municipalities in which the Division currently holds formal hearings, pre-hearing and settlement conferences. The manner in which recent events involving a potentially violent situation was handled indicate that some attorneys and insurers are unsure whether to contact the Division and to whom the call should be directed. Parties in litigated cases are understandably concerned about *ex parte* communications with the judge.

Action Requested: Please report any threats or threatening situations to the Division's switchboard operator at 608-266-1340. Our operator will take the information and direct your call to someone for follow up. If it is less than 24 hours before a scheduled hearing, pre-hearing or settlement conference, you should not hesitate to notify the Administrative Law Judge directly, or his or her supervisor.

Inquiries: Please direct any questions to the Director, Bureau of Legal Services, 608-267-6704.

Cc: The Division is mailing copies of this request to attorneys that regularly represent claimants in litigated cases.

Legal Update

New Legislation

As discussed during the 25th Annual Worker's Compensation Update, 2001 Assembly Bill 505, which amends Chapter 102, is moving through the state legislature. The Bill history is set forth below. The Assembly passed the bill on October 16, 2001. The bill is currently being considered by the Senate. The effective date of the bill, should it pass as expected, is January 1, 2002, or the day after publication, whichever is later.

The following changes are of particular interest:

- Section 7 increases the maximum rates for temporary disability and permanent disability in Wis. Stat. § 102.11.
- Section 8 clarifies the effect of overtime on the calculation of average weekly wage, and it sets forth an alternative method of calculating average weekly wage in Wis. Stat. § 102.11.
- Section 10 clarifies what it means to be a member of a class of part-time worker's in Wis. Stat. § 102.11.
- Section 21 authorizes the Department to order the payment of future medical expenses under Wis. Stat. § 102.18.
- Section 29, which amends Wis. Stat. § 102.32, sets forth deadlines for the payment of permanent disability in contested and uncontested cases.
- Section 35, which amends Wis. Stat. § 102.42, codifies and modifies the *Spencer* rule.
- Sections 45 creates Wis. Stat. § 102.61 (1g), which states that an employer may avoid liability for retraining expenses by offering the employee suitable employment within the employee's work restrictions.

The text of the entire bill is available on line www.legis.state.wi.us/2001/data/AB-505.pdf. The on-line version of the bill begins with an eight-page summary of the bill prepared by the Legislative Reference Bureau.

The current history of Assembly Bill 505 is as follows:

[ASSEMBLY BILL 505](#)

An Act to repeal 102.077 (3) and 102.125 (2); to renumber and amend 102.11 (1) (a) and 102.125 (1); to amend 15.227 (4), 102.04 (2), 102.07 (12m), 102.11 (1) (intro.), 102.11 (1) (b), 102.16 (2) (d),

102.16 (2m) (c), 102.17 (1) (c), 102.17 (1) (e), 102.17 (1) (h), 102.17 (4), 102.18 (1) (b), 102.20, 102.23 (1) (d), 102.29 (8), 102.31 (8), 102.32 (5), 102.32 (6), 102.33 (2) (a), 102.37, 102.38, 102.39, 102.43 (5), 102.43 (6) (b), 102.44 (1) (intro.), 102.44 (1) (a), 102.44 (1) (b), 102.57, 102.58, 102.59 (1), 102.61 (1), 102.61 (1m) (c), 102.61 (1m) (d), 102.61 (1m) (e), 102.61 (1m) (f), 102.61 (2), 102.66 (1), 102.66 (2) and 626.32 (1) (a); and to create 102.01 (2) (k), 102.07 (7m), 102.11 (1) (a) 4., 102.11 (1) (am), 102.123, 102.18 (1) (e), 102.26 (3) (b) 3., 102.33 (2) (c), 102.42 (1m) and 102.61 (1g) of the statutes; relating to: various changes to the worker's compensation law. (FE)

2001

- 09-19. A. Introduced by Representatives Hundertmark and Turner; cosponsored by Senators Hansen and A. Lasee.
- 09-19. A. Read first time and referred to committee on Labor and Workforce Development 393
- 09-26. A. Public hearing held.
- 09-26. A. [Fiscal estimate received.](#)
- 09-26. A. Executive action taken.
- 10-02. A. Report passage recommended by committee on Labor and Workforce Development, Ayes 9, Noes 0 405
- 10-02. A. Referred to committee on Rules 406
- 10-11. A. Placed on calendar 10-16-2001 by committee on Rules.
- 10-16. A. Read a second time 437
- 10-16. A. Assembly amendment [1](#) offered by Representative Johnsrud 437
- 10-16. A. Assembly amendment [1](#) withdrawn and returned to author 437
- 10-16. A. Ordered to a third reading 437
- 10-16. A. Rules suspended 437
- 10-16. A. Read a third time and passed, [Ayes 96, Noes 0](#) 437
- 10-16. A. Ordered immediately messaged 437
- 10-18. S. Received from Assembly 416
- 10-18. S. Read first time and referred to committee on Labor and Agriculture 417

New Cases

International Paper Co. V. LIRC, 2001 WI 248, 2001 Wisc. App. LEXIS 968 (September 25, 2001). This decision holds that the 12-year statute of limitations under Wis. Stat. § 102.17 (4) begins to run on the date of death regarding a claim for death benefits under Wis. Stat. § 102.46.

EDITORS

<p>Attorney Larry Steven Schifano Thrasher, Doyle, Pelish, Franti & Schifano, LTD. 13 East Eau Claire Street, P.O. Box 31 Rice Lake, Wisconsin 54868 Phone 715-234-8105 Telefax 715-234-2985</p>	<p>Attorney Patricia Janka Sandoz Stellpflug, Janssen, Nell, Hammer, Kirschling & Bartels 420 Reid Street, #200, P.O. Box 5637 De Pere, Wisconsin 54115 Phone 920-336-5766 Telefax 920-336-5769</p>
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E-mail: ls@ricelakelaw.com.

E-mail: patricia@SJNHlaw.com.

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